TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 226 66.

THE MISSOURI, KANSAS AND TEXAS TRUST COMPANY, PETITIONER,

vs.

THEODORE M. KRUMSEIG AND LOUISE KRUMSEIG.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

PETITION FILED MARCH 8, 1898.
CERTIORARI AND RETURN FILED MARCH 29, 1898.

(16,507.)

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vs.

THEODORE M. KRUMSEIG AND LOUISE KRUMSEIG.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 27, 1897.

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1 Pleas and proceedings in the United States circuit court of appeals for the eighth circuit at the May term, 1896, of said court, begun and held at the United States court-house, in the city of St. Paul, Minnesota, on the first Monday in May, to wit, the fourth day of May, A. D. 1896, before the Honorable Henry C. Caldwell, Honorable Walter H. Sanborn, and Honorable Amos M. Thayer, circuit judges.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Be it remembered that heretofore, to wit, on the nineteenth day of February, A. D. 1896, a transcript of record, in pursuance to an appeal allowed by the circuit court of the United States for the district of Minnesota, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit in a certain cause wherein the Missouri, Kansas and Texas Trust Company was appellant and Theodore M. Krumseig *et al.* were appellees, which said transcript of record is in the words and figures following, to wit:

2 United States of America, Circuit Court of the United States, District of Minnesota, Fifth Division.

Pleas in the United States circuit court, district of Minnesota, fifth division thereof, in the equity cause numbered 177 and entitled Theodore M. Krumseig and Louise Krumseig, plaintiffs, *vs.* Missouri, Kansas & Texas Trust Company, a corporation, defendant.

United States Circuit Court, District of Minnesota, Fifth Division, *ss*:

Be it remembered that on the 13th day of August, A. D. 1894, there was filed in the office of the clerk of the United States circuit court, district of Minnesota, fifth division, at Duluth, in said (district), a transcript from the district court of the eleventh judicial district, in and for the county of St. Louis and State of Minnesota by the defendants herein, which said transcript is in words and figures as follows, to wit:

Transcript.

District Court, Eleventh Judicial District.

STATE OF MINNESOTA, } ss:
St. Louis County, }

Summons.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs,
against
MISSOURI, KANSAS & TEXAS TRUST COMPANY, a Corporation, Defendant.

The State of Minnesota to the above-named defendant:

You are hereby summoned and required to answer the complaint of the plaintiff- in the above-entitled action, which complaint has been filed in the office of the clerk of said district court, at the city of Duluth, county of St. Louis and State of Minnesota, and to serve a copy of your answer to the said complaint on the subscriber, at his office, in the city of Duluth, in the said county of St. Louis within twenty days after service of this summons upon you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff- in
3 this action will apply to the court for the relief demanded in said complaint.

Dated May 7th, A. D. 1894.

J. B. RICHARDS,
Plaintiffs' Attorney, 304 Burrows Bldg., Duluth, Minn., Res. 522 W. 5th St.

Filed May 17, 1894.

D. J. SINCLAIR,
Clerk of District Court,
By F. R. MILLAR, *Deputy.*

District Court, Eleventh Judicial District.

STATE OF MINNESOTA, } ss:
St. Louis County, }

Complaint.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY, a Corporation, Defendant.

Plaintiffs respectfully show to the court:

1. That they are the owners of and are in possession of the following-described premises, to wit: lot seven (7) of block sixty-two (62) of Portland division of Duluth, Minnesota, according to the plat thereof of record in the office of the register of deeds in and for the county of St. Louis and State of Minnesota; and plaintiffs allege

that at all the times hereinafter mentioned they were and are residents of the city of Duluth, Minnesota.

2. That defendant is a corporation organized under and by virtue of the laws of the State of Missouri and that defendant claims an interest in and a lien upon said above-described premises adverse to the interest of the plaintiffs therein and by virtue of the mortgage thereon hereinafter mentioned and described, which mortgage constitutes an incumbrance and a cloud upon the title and right of the plaintiffs in said premises whereas the plaintiffs allege the fact to be that, on their information and belief, that said mortgage is wholly illegal and void, as more fully appears from the facts hereinafter stated.

3. That at Duluth, Minnesota, on or about September 5th, 1890, the plaintiffs for the consideration hereinafter stated, made, executed and delivered to the defendant their ten (10) certain promissory notes in writing dated September 5th, 1890, each for the sum of $360.00 each payable in monthly installments of thirty ($30.00) dollars at the office of the defendant at Kansas city, Mo., commencing with the 6th day of September, 1890, and ending with September 5th, 1900, and each of the said monthly installments drawing interest at the rate of ten per cent. per annum after due; that the first forty-one (41) of the said 120 installments have been paid amounting to the sum of $1,230.00.

3½

4. That at Duluth, Minnesota, on or about September 5th, 1890, the plaintiffs made, executed and delivered to the defendant as mortgagee for the purpose of securing to the defendant the payment of the said promissory notes their certain indenture of mortgage in the words and figures as follows, viz,

"This indenture of mortgage made this 5th day of September in the year of our Lord one thousand eight hundred and ninety, by and between Theodore M. Krumseig and Louise Krumseig, his wife, of the county of St. Louis and State of Minnesota, parties of the first part and Missouri, Kansas and Texas Trust Company, a corporation, party of the second part.

Witnesseth, That the parties of the first part for and in consideration of the sum of one dollar to them in hand paid by the party of the second part, the receipt of which is hereby acknowledged, have granted, bargained and sold and by these presents do grant, bargain, sell, convey and confirm unto the said party of the second part and its assigns forever all of the following described tract piece or parcel of land lying and situate in St. Louis county and State of Minnesota, to wit, lot numbered seven (7) of block numbered sixty-two (62), Portland division of Duluth as same appears upon a recorded plat on file in the office of the recorder of deeds for St. Louis county, Minnesota,

To have and to hold the same with all and singular the hereditaments and appurtenances belonging or in anywise appertaining and all the right of homestead exemption unto the party of the second part and to its successors and assigns forever. And the said parties of the first part do hereby covenant and agree that at the delivery hereof they are the lawful owners of the premises above

granted and (siezed) of a good and indefeasible estate of inheritance therein, free and clear of all incumbrances and that they will warrant and defend the same in the quiet and peac-able possession of said party of the second part, its successors and assigns for-
4 ever against the lawful claims of all persons whomsoever. Provided, always and this instrument is made, executed and delivered on the following conditions, to wit,

First. Said parties of the first part are justly indebted to the party of the second part in the sum of thirty-six hundred ($3,600.00) dollars lawful money of the United States of America, as witnessed by ten certain promissory notes, each for the sum of three hundred and sixty dollars, payable in twelve monthly installments of thirty dollars each, on the 5th day of every month, beginning with the 5th day of September, 1890, which said notes have been executed and delivered by the said parties of the first part of even date herewith and are payable to the order of said Missouri, Kansas & Texas Trust Company at its office in Kansas City, Mo.

Second. Said parties of the first part hereby agree to pay all taxes and assessments that may be levied upon said premises when the same are due and insurance premiums for insurance to be taken out in some fire insurance company to be selected by the party of the second part, to the amount of one thousand dollars loss, if any, payable to the mortgagee or its assigns; and if said taxes and said premiums for insurance are not so paid the party of the second part or the legal holder or holders of this mortgage may without notice declare the whole sum of money hereby secured due and payable at once or may elect to pay said taxes, assessments and insurance premiums and the accounts so paid shall be a lien on the premises aforesaid and be secured by this mortgage and collected in the same manner as the principal debt hereby secured with interest thereon at the rate of ten per cent. per annum. But whether the legal holder or holders of this mortgage elect to pay such taxes, assessments or insurance premiums or not, it is distinctly understood that the legal holders hereof may immediately cause this mortgage to be foreclosed and it is further expressly agreed by and between the parties hereto that said second party and its assigns shall be entitled to collect and may demand, collect and receive all rents, issues and profits of the premises herein described and this instrument shall be construed to be a full assignment by said first parties to said second party and its assigns of said rents, issues and profits. And if suit shall be brought for the foreclosure of this mortgage or the collection of the indebtedness secured thereby or any part thereof, said parties of the (second) part agree to pay to said second party or assigns a reasonable attorney's fee to be taxed as part of the costs in said suit.

Third. Said parties of the first part agree to keep all buildings, fences and other improvements upon said premises in as
5 good condition and repair as the same are at this date and to abstain from all waste on said premises until the notes hereby secured are paid.

Fourth. Said parties of the first part hereby agree that if the

makers of said notes shall fail to pay, or cause to be paid said money according to the tenor and effect of said notes and each and every of them respectively in twelve monthly installments, that is, on the 5th day of each month after date until paid as is provided by said notes or to conform or comply with any of the foregoing conditions or agreements, the whole sum of money hereby secured at the option of the legal holder or holders thereof, become due and payable at once without notice with interest at the rate of ten per (—) per annum computed annually on said notes from the date thereof to the time when the money shall be actually paid. Provided however that all of said money shall not be due and payable until the makers of said notes shall pay or cause to be paid four consecutive installments as in said notes provided. And the said parties of the first part for said consideration do hereby expressly waive an appraisement of said real estate, and all benefit of the homestead exemption and assay laws of the State of Minnesota. It is further agreed that in the event that suit is commenced to foreclose the mortgage, the mortgagee or assigns may at any time take possession of said mortgaged premises, and in the decree of foreclosure, said mortgagee or assigns shall have an order for the immediate possession of said premises.

The foregoing conditions being performed, this conveyance to be void, otherwise of full force and virtue. And it is further understood by and between the said parties of the first part, their executors, administrators or assigns and the said party of the second part, the Missouri, Kansas & Texas Trust Company, that in case said Theodore M. Krumseig, one of the parties of the first part should die after the execution and delivery of the said notes and this mortgage, and within ten years thereafter, each and every of the said notes remaining unpaid at the said date shall be surrendered to the executors or administrators of the said Theodore M. Krumseig, one of the parties of the first part, and this mortgage shall be cancelled and satisfied; provided, however, that said parties of the first part shall have promptly paid each monthly installment that shall have become due prior to his death, according to the terms of the notes hereinbefore mentioned, and that he has not committed suicide within two years and has not without written consent of the party of the second part, visited the torrid zone, or personally engaged in the business of blasting, mining or submarine operations, or in the manufacture, handling, or transportation of explosives or entered into the service of any railroad train, or on a steam or sailing vessel for two years.

In testimony whereof, the said parties of the first part have hereunto subscribed their names and affixed their seals the day and year above mentioned.

THEODORE M. KRUMSEIG. [SEAL.]
LOUISE KRUMSEIG. [SEAL.]

KATIE BRANDHORST.
JOHN MILOSTAN.

Executed and delivered in the presence of—
WENDELL P. MOSHER.

STATE OF MINNESOTA, }
St. Louis County. }

Be it remembered, that on this 5th day of September, A. D. eighteen hundred and ninety, before the undersigned a notary public in and for the said county and State, personally came Theodore M. Krumseig and Louise Krumseig, his wife, who are both personally known to me to be the same persons described in and who executed the foregoing mortgage deed, and each of them duly acknowledged the same to be their voluntary act and deed.

In witness whereof, I have hereunto subscribed my name and affixed my official seal on the day and year above written.

[NOTARIAL SEAL.] WENDELL P. MOSHER,
Notary Public, St. Louis Co., Minn."

5. That on the 5th day of September, 1890, at — p. m. said mortgage was filed for record and duly recorded in the office of the register of deeds in and for St. Louis Co. Minnesota, in Book 50 of Mortgages on page 443.

6. That the sole consideration for the notes and mortgage above described was as follows, viz, (1) the sum of nineteen hundred ($1,970.00) and seventy dollars delivered at Duluth, Minn. by defendant to said plaintiffs at date of said contract, (2) interest on said sum from the date of the said loan until the maturity of the said notes, and (3) that portion of the mortgage described as follows, viz,

"And it is further understood by and between the parties of the first part their executors, administrators or assigns and the party of the second part the Missouri, Kansas & Texas Trust Com-
7 pany, that in case the said Theodore M. Krumseig one of the said parties of the first (—), should die after the execution and delivery of said notes and this mortgage, and within ten years thereafter, each and every of said notes remaining unpaid at said date shall be surrendered to the executors or administrators of the said Theodore M. Krumseig, one of the parties of the first part, and this mortgage shall be cancelled and satisfied; provided, however, that the parties of the first part shall have promptly paid each monthly installment which shall have become due prior to his death, (accord-) to the terms of the said notes hereinbefore mentioned and that he has not committed suicide within two years, and has not, without the written consent of the party of the second part, visited the torrid zone or personally engaged in the business of blasting, mining, or submarine operations or in the manufacture, handling, or transportation of explosives, or entered into the service of railroad train or on a steam or sailing vessel for two years."

And plaintiffs allege that by said notes and mortgage there was reserved and secured by the defendant and so intended to be reserved and secured for the said loan and forbearance of the sum paid to and received by the plaintiffs, a greater sum and value than ten ($10.00) dollars on one hundred ($100.00) dollars for one year, even after the deduction of the full, ample, reasonable, ordinary and proper costs of the life-insurance part of the consideration, as more fully herein-

after described, and plaintiffs aver that the rate of interest so charged and reserved by defendant in said contract is not less than 20 per cent. per annum for the full term of the ten years, over and above, and after allowing for the full, ordinary and proper costs of life insurance on the life of said Theodore M. Krumseig, at his age at said time and for the times and on the amounts risked in said contract by the defendant, all of which facts were well known to the defendant at the time of the making of said contract.

Plaintiffs further allege that defendant is not a building and loan association or society, and that said life-insurance part of said consideration was so inserted in said contract as a mere scheme and device for the purpose of covering, disguising, and concealing usury in said contract and for no other purpose, and that the said notes and mortgages are and were wholly usurious and void.

7. Plaintiffs further allege that said contract whereby upon the death of said Theodore M. Krumseig, as provided in said contract, defendant was to deliver up the notes and cancel the said mortgage of record, was and is and was so understood and agreed by and
8 between all of the parties thereto, when made, to be a life-insurance contract on the life of said Theodore M. Krumseig, that the original application for the said loan of money hereinbefore mentioned was on one of the printed blanks of the defendant, and said application, signed by said Theodore M. Krumseig, expressly stipulated that said Theodore M. Krumseig should pass such satisfactory medical examination as should be required by defendant, and should pay to the defendant a fee of $3.00 therefor, and that said application for the loan should not be deemed accepted and approved by defendant until a satisfactory medical examination of said Theodore M. Krumseig had been had; and that thereafter the defendant required the said Theodore M. Krumseig to pass and said Krumseig did pass a medical examination and did pay the said fee of $3.00 therefor, and said examination was by said defendant submitted to the Prudential Life Insurance Company of Newark, N. J. with which company defendant had a contract to report on all of defendant's applications for loans in the said State of Minnesota, and said Prudential Company, having reported thereon, said application was thereupon duly accepted and the notes and mortgage herein described were thereupon executed and delivered to the defendant and plaintiffs allege on their information and belief, that upon favorable report as aforesaid by Prudential Life Insurance Co. on the said Theodore M. Krumseig "risk," defendant thereupon entered into a contract with said Prudential Co. whereby said Prudential Co. undertook and agreed to indemnify and save defendant harmless from all loss accruing to defendant under its said contract with the plaintiffs through the possible death of said Theodore M. Krumseig within the life of the said contract.

8. That the defendant has never complied in any manner with any of the provisions of title 6 of chapter thirty-four (34) of the General Laws of the State of Minnesota of 1878, or of any of the laws of the State of Minnesota respecting the transaction of a life insurance business by foreign corporations in the State of Minnesota,

and that thereby the said contract, embodied in said notes and mortgage, was made in violation of the laws of the State of Minnesota, and was and is, wholly illegal and void.

Wherefore, plaintiffs ask the judgment of the court:

1. That the said mortgage be cancelled of record and that defendant be declared to have no interest in said mortgaged premises by virtue thereof, and that the defendant be permanently enjoined from taking any action or proceeding for the enforcement of the same or either of them and that the said notes be cancelled and delivered up to the said plaintiffs.

9 2. For their costs and disbursements herein.

3. For such other and further relief as may seem proper and just to the court.

Dated Duluth, Minn., May 7th, 1894.

J. B. RICHARDS,
Plaintiffs' Attorney.

STATE OF MINNESOTA, }
County of St. Louis. }

Theodore M. Krumseig being first duly sworn upon oath says that he is one of the plaintiffs in the foregoing within-entitled action; that he has read the foregoing complaint; that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to such matters he believes it to be true.

THEODORE M. KRUMSEIG.

Subscribed and sworn to before me this 7th day of May, 1894.

[NOTARIAL SEAL.] JOHN B. RICHARDS,
Notary Public, St. Louis Co., Minnesota.

Filed May 17th, 1894.

J. D. SINCLAIR,
Clerk of District Court,
By F. R. MILLAR, *Deputy.*

STATE OF MINNESOTA, } ss:
St. Louis County, }

District Court, Eleventh Judicial District.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs, *against* MISSOURI, KANSAS & TEXAS TRUST COMPANY, a Corporation, Defendant. } Summons.

The State of Minnesota to the above-named defendant:

You are hereby summoned and required to answer the complaint of the plaintiff in the above-entitled action, which complaint has been filed in the office of the clerk of said district court, at the city of Duluth, county of St. Louis and State of Minnesota, and to serve a copy of your answer to the said complaint on the subscriber, at his office, in the city of Duluth, in the said county of St. Louis

within twenty days after the service of this summons upon you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will apply to the court for the relief demanded in said complaint.

Dated May 7th, A. D. 1894.

J. B. RICHARDS,
Plaintiffs' Attorney, 304 Burrows B'ld'g, Duluth, Minn.

Residence 522 W. 5th St., Duluth.

Filed May 24, 1894.

D. J. SINCLAIR,
Clerk of District Court,
By F. R. MILLAR, *Deputy.*

STATE OF MINNESOTA, } ss:
County of St. Louis, }

I hereby certify and return that by virtue of the within summons I have made due and diligent search and inquiry for the within-named Missouri, Kansas & Texas Trust Company a corporation throughout the said county of St. Louis, to serve the within summons upon them, but they cannot be found therein, having no agent or officer therein upon whom service can be made.

Dated at Duluth this 23d day of May 1894.

PAUL SHARVEY,
Sheriff, St. Louis County, Minn.,
By IWAN HANSEN, *Deputy.*

Sheriff's Fee.

Return $1 00
Mileage.... .....

Filed May 24, 1894.

D. J. SINCLAIR,
Clerk of the District Court,
By F. R. MILLAR, *Deputy.*

STATE OF MINNESOTA, } ss:
St. Louis County, }

District Court, Eleventh Judicial District.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY, a Corporation, Defendant.
} Affidavit for Publication.

STATE OF MINNESOTA, } ss:
St. Louis County, }

J. B. Richards being first duly sworn on his oath states that he is attorney for the plaintiff herein; that he has heretofore deliv-

ered to the sheriff of said county a summons herein for serv-
11 ice upon the defendant; and that the said sheriff has made his return thereon that he was unable to find the defendant within the said county, or any agent or officer upon whom service of said summons could be made and said summons with the said return thereon has been heretofore filed in the office of the clerk of said court; that defendant is as deponent believes a foreign corporation and is not a resident of the State of Minnesota; but is a Missouri corporation and has its office at Kansas City, Mo.; that deponent has heretofore deposited in the post-office at Duluth, Minn. postage prepaid, an envelope containing a copy of said original summons, said envelope directed to defendant at Kansas City, Mo.; and deponent further states that the subject of the said action is a certain mortgage executed by the plaintiffs as mortgagors, dated September 5th, 1890 to defendant as mortagee, covering on lot 7, of block 62, of Portland division of Duluth, Minn, in said county and State (*State*), according to the plat thereof; and the object of said action being to determine the interest which defendant claims in said premises by virtue of the said mortgage; and to discharge said mortgage from the records of said county.

Wherefore, deponent makes this affidavit for the purpose of laying foundation for obtaining service of said summons upon defendant by publication according to law.

J. B. RICHARDS.

Subscribed and sworn to before me this 2nd day of June, 1894.

[NOTARIAL SEAL.] EDWARD S. TOWNE,
Notary Public, St. Louis County, Minn.

Filed June 4, 1894.

D. J. SINCLAIR,
Clerk of District Court,
By F. R. MILLAR, *Deputy.*

Petition for Removal of this Cause to the United States Circuit Court, Fifth Division, District of Minnesota.

District Court, Eleventh Judicial District.

STATE OF MINNESOTA, } ss:
St. Louis County, }

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs, }
vs.
MISSOURI, KANSAS & TEXAS TRUST CO., Defendant. }

To the honorable the district court of St. Louis county, eleventh judicial circuit, State of Minnesota:

Your petitioner respectfully shows that it is the defendant in the above-entitled suit, and that it is a non-resident of the
12 State in which said suit was brought, to wit, the State of Minnesota; and that the matter and amount in litigation in

dispute in said suit, exclusive of interest and costs, exceeds the sum or value of two thousand dollars.

That the said suit is of a civil nature and is brought for the purpose of having a certain mortgage described in the complaint in the above-entitled cause, cancelled of record, and that this defendant be declared to have no interest in said mortgaged premises by virtue thereof; and that this defendant be permanently enjoined from taking any action or proceeding for the enforcement of the same, and that certain notes be cancelled and delivered up to plaintiffs.

That the controversy in the said suit is wholly between citizens of different States, to wit: between your said petitioner, who avers that it was at the time of the bringing of this suit and still is a corporation organized and existing under the laws of the State of Missouri, and a citizen of said State of Missouri, and the said plaintiffs, Theodore M. Krumseig and Louise Krumseig, who, as your petitioner avers, were then and still are citizens of the State of Minnesota.

And your petitioner herewith offers a bond with good and sufficient security for its entering in said circuit court of the United States, fifth division, district of Minnesota, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court, if said court shall hold that this suit was wrongfully or improperly removed thereto.

And your petitioner prays this honorable court to proceed no further herein, except to make an order for the removal of this cause to said United States circuit court, and to accept said surety and bond, and to cause the record herein to be removed into said circuit court of the United States in and for the fifth division, district of Minnesota. And it will ever pray.

WM. C. WHITE,
Attorney for Petitioner.

STATE OF MISSOURI, }
County of Jackson, } ss:

I, J. McD. Trimble, being duly sworn, do say that I am a member of the firm of Trimble and Bradley the general attorney for the petitioner in the above-entitled cause; that I have read the
13 foregoing petition, and know the contents thereof; and that the statements and allegations therein contained are true, as I verily believe.

J. McD. TRIMBLE.

Subscribed by the said J. McD. Trimble in my presence, and by him sworn to, before me, this 2d day of July, A. D. 1894.

My commission as notary expires September 23d, 1895.

[NOTARIAL SEAL.] WM. R. THURMOND,
Notary Public in and for Jackson County, Missouri.

In District Court, Eleventh Judicial District.

STATE OF MINNESOTA, *County of St. Louis,* } ss:

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY, Defendants.

The defendant herein having within the time provided by law filed its petition for removal of this cause to the circuit court of the United States for the fifth division, district of Minnesota, and having at the same time offered its bond in the sum of five hundred dollars, with the National Surety Company and S. F. Boyce, good and sufficient sureties; pursuant to statute and conditioned according to law; now therefore, this court does hereby *and* accept and approve said bond and accept said petition, and does order that this cause be removed for trial to the next circuit court of the United States for the fifth division, District of Minnesota, pursuant to the statute of the United States, and that all other proceedings of this court be stayed.

Dated July 25th, 1894.

By the court:

CHAS. L. LEWIS, *Judge.*

Filed Jul- 26, 1894.

D. J. SINCLAIR,
Clerk of District Court,
By J. S. MOODY, *Deputy.*

Know all men by these presents that we, Missouri, Kansas & Texas Trust Company, as (princip*les*,) and National Surety Company and S. F. Boyce as sureties, are held and firmly bound unto Theodore M. Krumseig and Louise Krumseig in the penal sum of five hundred dollars for the payment whereof well and truly to be made unto the said Theodore M. Krumseig and Louise Krumseig, their heirs and assigns, we bind ourselves, our heirs, repre-
14 sentatives and assigns jointly and severally, firmly by these presents.

Yet, upon these conditions: That said Missouri, Kansas & Texas Trust Company having petitioned the district (co*unty*) of St. Louis county, Minnesota, being the eleventh judicial circuit of said State of Minnesota, for the removal of a certain cause therein pending, wherein the said Theodore M. Krumseig and Louise Krumseig are plaintiffs and the said Missouri, Kansas & Texas Trust Company is defendant, to the circuit court of the United States in and for the fifth division, district of Minnesota.

Now if the said Missouri, Kansas & Texas Trust Company shall enter in said circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States, if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise in full force and effect.

In testimony whereof, the said Missouri, Kansas & Texas Trust Company and said National (Surity) Company have caused these presents to be signed by their duly authorized officers and their corporate seals to be hereto affixed, and the said S. F. Boyce has hereunto set his hand and seal this 24th day of July, 1894.

MISSOURI, KANSAS & TEXAS TRUST COMPANY,

[CORPORATE SEAL.] By A. A. MOSHER, *Vice-President.*

Attest:
ROB'T B. CONE, *Secretary.*

NATIONAL SURETY COMPANY,

[CORPORATE SEAL.] By CHARLES A. DEAN, *Vice-President.*

Attest:
W. S. RUGH, *Secretary.*

S. F. BOYCE. [SEAL.]

STATE OF MINNESOTA, } ss:
County of St. Louis, }

S. F. Boyce being duly sworn, says that he is a resident and freeholder in said State and county and is worth the sum of
15 $500.00 over and above all property exempt from seizure and sale on above execution.

S. F. BOYCE.

Subscribed and sworn to before me this 25th day of July, 1894.
WM. C. WHITE, [NOTARIAL SEAL.]
Notary Public, Minnesota.

Approved by the judge of the district court 11th judicial district. July 25th, 1894.

CHAS. L. LEWIS, *Judge.*

Filed Jul- 26, 1894.

D. J. SINCLAIR,
Clerk of District Court,
By J. S. MOODY, *Deputy.*

Clerk's Certificate.

STATE OF MINNESOTA, } ss:
County of St. Louis, }

District Court, Eleventh Judicial District.

I, D. J. Sinclair, clerk of the district court, St. Louis county, and State of Minnesota, do hereby certify that I have compared the foregoing papers-writing with the original summons, complaint, summons and sheriff's return, affidavit of J. B. Richards, bond on removal to U. S. circuit court and petition and order for removal to U. S. circuit court, in the action therein entitled, now remaining of

record in my office, and that the same is a true and correct copy and transcript of said original files and the whole thereof.

Witness my hand and seal of said court, at Duluth, this 13th day of August, A. D. 1894.

D. J. SINCLAIR, *Clerk*,
By J. S. MOODY, *Deputy Clerk*.

That on the 9th day of October, A. D. 1894, there was filed with the clerk of said court by solicitor for the defendant, a notice of motion to require the plaintiffs to replead, which said notice is, in words and figures, as follows, to wit:

United States Circuit Court, Fifth Division, District of Minnesota.

Notice of Motion.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY, Defendant.

To J. B. Richards, Esquire, attorney for plaintiffs.

SIR: You are hereby notified that at the next general term of this court, to be held at the circuit court room in the city of
16 Duluth, Minnesota on the first day of said term, to wit, the 9th day of October, 1894, at the opening of court on that day, or as soon thereafter as counsel can be heard, a motion will be made for an order that a rule be entered in the above-entitled cause, requiring the plaintiffs to replead, and thereupon to file such new bill in the usual form of bills in equity so as to conform to the equity practice in this court.

Yours very truly, WM. C. WHITE,
Attorney for Defendant.

Dated August 14, 1894.

That on the same day, to wit, on the 9th day of October, A. D. 1894, the following proceedings in said cause were had in open court, to wit:

THEODORE M. KRUMSEIG *et al.*
vs.
MISSOURI, KANSAS & — TRUST COMPANY.

Now comes the defendant by its solicitor and moves the court that the plaintiffs be required to recast their complaint which motion was fully argued by counsel for the respective parties, and the court being fully informed therein it is by the court,

Ordered, that said motion be and the same hereby is denied, and that the defendant have until next rule day in which to file its answer.

It appearing to the court that said case is an equity cause, it is by the court,

Ordered, that said cause be, and it hereby is transferred to the equity calendar.

John B. Richards, Esq., appeared as solicitor for the complainant.

That afterwards, to wit, on the 3rd day of November, A. D. 1894, there was filed with the clerk of said court, by its solicitor, the defendant's answer in said cause, which answer is in words and figures as follows, to wit:

United States Circuit Court, Fifth Division, District of Minnesota.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY, Defendant.

The above-named defendant, answering the complaint of plaintiffs herein,

17 I. Denies each and every allegation contained in said complaint, except as the same are hereinafter admitted, denied, qualified or explained.

II. Admits the allegations of paragraphs 1 and 2 of said complaint, except that defendant denies that said mortgage is illegal and void.

III. Admits the allegations of paragraphs 3 and 4 of said complaint and of paragraph 5 thereof.

IV. Denies the allegations of paragraph 6 of said complaint, but admits and alleges that the notes and mortgage described in plaintiffs' complaint and therein set forth, were given by plaintiffs to defendant for and in consideration of a certain loan made by defendant to plaintiffs, legal interest thereon from the date of said loan to its maturity, and a certain guaranty to said plaintiffs upon the part of defendant to cancel and discharge the debt represented by said loan in the event of the plaintiff, Theodore M. Krumseig, dying before the maturity of said loan, which guaranty is set forth in the complaint herein in the body of said mortgage and that the principal sum of said loan and the amount paid by the defendant to said plaintiffs thereupon was $1,970.00, and that said amount, together with the legal interest thereon and the cost of the guaranty aforesaid, constituted the consideration for the promissory notes and mortgage set forth in the complaint.

V. Denies the allegations of paragraph 7 of said complaint; denies that said contract was, is or was by either party thereto understood or agreed to be a life insurance contract; but admits that it was stipulated that said Theodore M. Krumseig should pass such satisfactory medical examination as should be required by defendant, and should pay a fee therefor to the medical examiner of $3.00, and that said examination was passed and said fee so paid and said examination submitted to the Prudential Life Insurance Company and that said company reported favorably thereon; but defendant denies that said Prudential Company undertook or agreed to indemnify and save defendant harmless from all or any loss which might accrue to defendant under its contract with plaintiffs through the possible death of said Krumseig or otherwise, and alleges that the contract with said Prudential Company was the ordinary and usual contract with it for the insurance for the period

of said loan, of defendant's insurable interest in the life of said plaintiff.

18 VI. Admits that defendant has not complied with the laws of Minnesota respecting the transaction of a life insurance business in said State by a foreign corporation, but denies that the contract in question was made in violation of the laws of the State of Minnesota; and denies that it was or is illegal or void; and defendant alleges that said contract was duly made and concluded between the parties thereto at the time and in the manner set forth in the mortgage securing said (promis-ory) notes and was fully understood and agreed to by all the parties thereto and became and is binding upon all of them.

VII. For another and further defense to plaintiffs' complaint, defendant alleges that it is not and at the time this action was begun was not the owner or holder of the said promissory notes and mortgage, and alleges that long prior to the institution of this action, to wit, on the — day of ——, 1891, in the usual course of business and before the maturity of said notes or any of them, defendant sold, assigned, endorsed and delivered said notes and mortgage, for a valuable consideration, to the Union Trust Company of Philadelphia, which company ever since has been and now is the legal owner and holder thereof.

Wherefore, defendant demands judgment against plaintiffs, that the complaint of plaintiffs herein be dismissed and that plaintiffs pay defendant's costs and disbursements herein.

Dated Nov. 3rd, 1894.

WM. C. WHITE,
Attorney for Defendant,
706-8 *Torrey Building, Duluth, Minnesota.*

STATE OF MINNESOTA, } ss:
County of St. Louis, }

Wm. C. White being duly sworn, says that he is the attorney for the defendant in the above and within entitled action, that he has read the foregoing answer and knows the contents thereof, and that the same is true to the best of his information, knowledge and belief; that the reason why this verification is made by affiant and not by defendant, is that the defendant and its officers are non-residents of Minnesota and are absent from the said county and State.

WM. C. WHITE.

Subscribed and sworn to before me this 3rd day of November, 1894.

[NOTARIAL SEAL.] W. D. EDSON,
Notary Public, Minnesota.

19 That on the 7th day of January, A. D. 1895, there was filed with the clerk of said court, a stipulation for an additional party defendant, which said stipulation is, in words and figures, as follows, to wit:

United States Circuit Court, Fifth Division, District of Minnesota.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY, Defendant.

Stipulation for Additional Party Defendant.

It is hereby stipulated and agreed by and between J. B. Richards, Esq., attorney for plaintiffs and W. C. White, Esq., attorney for defendant that the Union Trust Company, of Philadelphia, Pa., be made a party defendant hereto without order of the court; and that the plaintiffs' bill be amended by adding the name of said Union Trust Company as defendant, by inserting therein allegations of the corporate character of said Union Trust Company, by changing the word "defendant" therein, to the word "defendants," (whereever) appropriate; and by inserting the words "Missouri, Kansas & Texas Trust Co." where necessary to properly explain the allegations of said bill as referring to the proper defendant intended; it not being the intention of any amendment to change any substantial allegation of the cause of action set forth; and it is agreed that said bill as so amended shall be considered as filed *nunc pro tunc*, of date of and as the original bill herein; and that the answer of the defendant, Missouri, Kansas & Texas Trust Co., now filed be considered the answer to said amended bill in all respects.

Dated Jan. 7th, 1895.

J. B. RICHARDS,
Attorney for Plaintiffs.
WM. C. WHITE,
Attorney for Def't M. K. T. Co.

That on the 10th day of January, A. D. 1895, there was filed with the clerk of said court by the solicitor for the plaintiff herein, an affidavit and order for service upon absent defendant Union Trust Company, together with an order of the court granting the same, which said affidavit and order are, in words and figures, as follows, to wit:

United States Circuit Court, Fifth Division, District of Minnesota.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY & UNION TRUST COMPANY, Defendants.

Affidavit for Order for Service upon Absent Defendant, Union Trust Co., of Notice to Appear.

STATE OF MINNESOTA, *St. Louis County.* } *ss:*

J. B. Richards being first duly sworn on his oath states that he is attorney for the plaintiffs herein; that this action was in 1894

brought in the district court of St. Louis County, State of Minnesota, against the defendant Missouri, Kansas & Texas Trust Company sole defendant, to procure the cancellation and removal, as be- a cloud on the plaintiffs' title, of a certain mortgage, executed by plaintiffs to said defendant on plaintiffs' real estate situate in said St. Louis County in the city of Duluth, of which plaintiffs were in the possession; that said defendant procured the removal of said action to the U. S. court; and did file its answer to the plaintiff-' bill alleging that in the year 1891 it had sold and transferred to defendant Union Trust Co. all its interest in and to the said mortgage and the notes secured thereby, as more fully appears in said answer on file; that thereupon plaintiffs procured the stipulation of the attorney for said Missouri, Kansas & Texas Trust Co., making and adding said Union Trust Co., as party defendant herein, which stipulation was on the 7th day of January, 1895 duly filed in this court.

And affiant alleges that said answer of defendant Missouri, Kansas & Texas Trust Co., alleges that said defendant Union Trust Co., is of Philadelphia, Pa.; and affiant alleges on his information and belief that said Union Trust Co., defendant, is a corporation organized under the laws of the State of Pennsylvania; and that its principal office and place of business is in Philadelphia, Pa., at No. 717 Ches-nut street; that said Union Trust Co. has not voluntarily appeared in said action; nor is it an inhabitant of the State of Minnesota, or within the jurisdiction of this court; nor can personal service of subpœna or process herein be made upon said Union Trust Co., within said State or jurisdiction; nor can it be
21 found therein; nor, to affiant's knowledge, has said Union Trust Co. any agent or person therein who is authorized to receive or accept service of subpœna or process therein.

Wherefore, affiant prays the court for an order directing said defendant Union Trust Co. to appear in said action, plead, answer, or demur, by a day certain, to be designated by the court pursuant to the statute in such cases made and provided; and further affiant saith not. J. B. RICHARDS.

Subscribed and sworn to before me this 8th day of January, 1895.
[NOTARIAL SEAL.] GEO. F. DAVIS,
Notary Public, St. Louis County, Minn.

United States Circuit Court, Fifth Division, District of Minnesota.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY & UNION TRUST COMPANY, Defendants.

Order Directing Service of Notice to Appear on Union Trust Company, Defendant.

It appearing from the files in said action and from the affidavit of J. B. Richards, attorney of the plaintiffs, that the Union Trust

Co., of Philadelphia, Pa., is a party defendant in said action; and is a corporation organized under the laws of the State of Pennsylvania; and is not an inhabitant of the State of Minnesota; nor within the jurisdiction of the court; and that is principal office and place of business is at No. 717 Ches-nut street in said city of Philadelphia, Pa.; and that it has no agent or person within the jurisdiction of the court who is authorized to receive or accept service of process herein and that personal service of notice to appear and plead, answer or demur to plaintiffs' bill herein may be made in Philadelphia on said non-resident defendant; and that the object of this action is to remove a cloud and incumbrance upon the title of plaintiffs in and to real property situated in the city of Duluth, St. Louis county, Minnesota, through the cancellation of a mortgage thereon given by plaintiffs to defendant Missouri, Kansas & Texas Trust Co., and alleged to have been transferred and assigned to said defendant Union Trust Co.; and that said Union Trust Co. is now the holder thereof; and that plaintiffs are in possession of said property;

22 Now therefore, upon application of the plaintiffs therefor, it is ordered that the said Union Trust Company, of Philadelphia, Pa., defendant herein, be required to appear in this action and to plead, answer or demur to the plaintiffs' bill herein filed on or before the 10th day of February, 1895, or in default thereof decree may be entered herein against said defendant as on full and complete default and failure to appear; and it is further ordered that this order be served upon said defendant Union Trust Company by delivery of a copy thereof, certified as correct by the clerk of this court, to the president, vice-president, secretary or managing agent or cashier of said Union Trust Company defendant, on or before the 25th day of January, 1895.

Dated at St. Paul, Minn., Jan. 10, 1895.

By the court.

R. R. NELSON, *Judge.*

That on the 12th day of February, A. D. 1895, there was filed with the clerk of said court the return of the service of the order next above mentioned by the United States marshal for the eastern district of Pennsylvania, which said return is, in words and figures, as follows, to wit:

STATE OF PENNSYLVANIA, } ss:
County of Philadelphia, }

Loyd J. Hunt being first duly sworn states on his oath that he is deputy marshal of the United States for the eastern district of Pennsylvania; that the annexed order made by Judge Nelson of U. S. circuit court, district of Minnesota, came to his hand on the 17th day of January, 1895; and that he served the said order on the Union Trust Company, of Philadelphia, Pa., known to him to be the Union Trust Company mentioned in said order as defendant, on the 17th day of January, 1895, in the city of Philadelphia, Pa., at 717 Chesnut street, by then and there delivering to and leaving with D.

Howard Foote, the secretary and treasurer of said Union Trust Company, defendant, a true and correct copy of said order, and said copy was duly certified to be a true copy of said order by the clerk of the U. S. circuit court of the district of Minnesota, fifth division, under the seal of the said court attached thereto.

LOYD J. HUNT,
Deputy U. S. Marshal, E. D. of Penna.

Subscribed and sworn to before me this 17th day of January, 1895.

[NOTARIAL SEAL.] WM. W. CRAIG,
Commissioner of the Circuit Court of the United States, Eastern District of Penna.

23 That on the 12th day of February, A. D. 1895, there was entered by the clerk of said court a decree (*comprofesso*) against defendant Union Trust Company, which said decree is, in words and figures, as follows, to wit:

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY and UNION TRUST COMPANY, Defendants. } No. 177.

This day comes the complainants by J. B. Richards their (silicitor), and files a (preacipe) herein for an order *pro confesso* against the above-named defendant Union Trust Company. And the premises being fully considered, and it appearing that said defendant has been duly and personally served with process and has failed to plead to the bill of complaint herein, within the time prescribed by the order of the court hercin, it is ordered that complainant's bill be taken as confessed.

Dated February 12th, A. D. 1895.

OSCAR B. HILLIS, *Clerk*,
By M. H. WISHART, *Deputy*.

That on the 4th day of March, A. D. 1895, there was filed with the clerk of said court (and) order setting aside the default — the Union Trust Company, which said order is, in words and figures, as follows, to wit:

In the Circuit Court of the United States, District of Minnesota, Fifth Division.

THEO. M. KRUMSEIG and LOUISE KRUMSEIG, Complainants,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY *et al.*, Defendants.

Order Setting Aside Default and Granting Leave to Answer.

Upon the application of the defendant, The Union Trust Company of Philadelphia, due notice of which appears to have been given to the plaintiff, it is ordered that the default herein against

the said defendant be and the same is hereby set aside, upon the payment of costs and the said defendant is given leave to file answer disclaiming any interest in this suit or the subject-matter in litigation.

Done at chambers in the city of St. Paul, Minnesota, this 13th day of March, 1895.

HENRY S. PRIEST, *Judge.*

24 That on the 14th day of March, A. D. 1895, there was filed with the clerk of said court an order granting leave for the defendant Missouri, Kansas & Texas Trust Company to amend its answer, which said order is in words and figures, as follows, to wit:

In the Circuit Court of the United States, District of Minnesota, Fifth Division.

THEO. M. KRUMSEIG and LOUISE KRUMSEIG, Complainants,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY *et al.*, Defendants.

Order Granting Leave to Amend Answer.

Upon motion of the defendant, The Missouri, Kansas & Texas Trust Company, due notice of which appears to have been given the plaintiff, it is ordered that the said defendant have leave to amend its answer upon payment of reasonable costs both in this instance and such as complainant has incurred by reason of making the Union Trust Company defendant herein as follows:

1st. By striking out all of paragraph seven.

2nd. By inserting in lieu thereof the following:

"VII. The defendant admits that it is now the owner and holder of the notes and m't'g. in question."

Done at Chambers in the city of St. Paul, Minnesota, this 13th day of March, 1895.

HENRY S. PRIEST, *Judge.*

That on the 14th day of May, A. D. 1895, there was filed with the clerk of said court a stipulation as to the date of filing amended answer, which said stipulation is, in words and figures, as follows, to wit:

United States Circuit Court, District of Minnesota, Fifth Division.

THEODORE KRUMSEIG *et al.*, Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY *et al.*, Defendants,

It is stipulated and agreed in the above-entitled matter, that the amended answer of the defendant was filed within the time contemplated and required by law and order of the court, having been held from index by the clerk of the court, because of non-filing of receipt

for payment of costs, though offered for filing and left with
25 the clerk on March 14th, 1895; and that same be filed of this date by the clerk, as though now originally left with him for filing; time of taking evidence to run from this date.

WM. C. WHITE,
Attorney for Def't M. K. & Trust Co.
J. B. RICHARDS,
Att'y for Plaintiffs.

Dated May 14th, 1895.

That on the 2nd day of July, A. D. 1895, there was filed with the clerk of said court, as of the 14th day of May, 1895, the amended answer of defendant, which said amended answer is, in words and figures, as follows, to wit:

United States Circuit Court, Fifth Division, District of Minnesota.

Answer.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY, Defendants.

The above-named defendant answering the complaint of plaintiffs herein, by this its amended answer:

I. Denies each and every allegation contained in said complaint, except as the same are hereinafter admitted, denied, qualified or explained.

II. Admits the allegations of paragraphs 1 and 2 of said complaint, except that defendant denies that said mortgage is illegal and void.

III. Admits the allegations of paragraphs 3 and 4 of said complaint and of paragraph 5 thereof.

IV. Denies the allegations of paragraph 6 of said complaint, but admits and alleges that the notes and mortgage described in plaintiffs' complaint and therein set forth, were given by plaintiffs to defendant for and in consideration of a certain loan made by defendant to plaintiffs, legal interest thereon from the date of said loan to its maturity and a certain guaranty to said plaintiffs upon the part of said defendant to cancel and discharge the debt represented by said loan in the event of the plaintiff, Theodore M. Krumseig dying before the maturity of said loan, which guaranty is set forth in the complaint herein in the body of said mortgage and that the
26 principal sum of said loan and the amount paid by the defendant to said plaintiffs, thereon was $1,970.00 and that said amount, together with the legal interest thereon and the cost of the guaranty aforesaid, constituted the consideration for the promis-ory notes and mortgage set forth in the complaint.

V. Denies the allegations of paragraph 7 of said complaint; denies that said contract was, is or was by either party thereto understood or agreed to be a life-insurance contract; but admits that it was stipulated that said Theodore M. Krumseig should pass such satis-

factory medical examination as should be required by defendant, and should pay a fee therefor to the medical examiner of $3.00, and that said examination was passed and said fee so paid and said examination submitted to the Prudential Life Insurance Company and that said company reported favorably thereon; but defendant denies that said Prudential Company undertook or agreed to indemnify and save defendant harmless from all or any loss which might accrue to defendant under its contract with plaintiffs through the possible death of said Theodore M. Krumseig or otherwise, and alleges that the contract with said Prudential Company was the ordinary and usual contract with it for the insurance for the period of said loan, of defendant's insurable interest in the life of said plaintiff.

VI. Admits that defendant has not complied with the laws of Minnesota respecting the transaction of a life-insurance business in said State by a foreign corporation, but denies that the contract in question was made in violation of the laws of the State of Minnesota, and denies that it was or is illegal or void; and defendant alleges that said contract was duly made and concluded between the parties thereto at the time and in the manner set forth in the mortgage securing said promissory notes and was fully understood and agreed to by all the parties thereto and became and is binding upon all of them.

VII. The defendant admits that it is now the owner and holder of the note in question.

Wherefore defendant demands judgment against plaintiffs, that the complaint of plaintiffs herein be dismissed and that plaintiffs pay defendant's costs and disbursements herein.

WM. C. WHITE,
Attorney for Defendant.

Dated March 14th, 1895.

STATE OF MINNESOTA, }
County of St. Louis, } ss:

William C. White, being duly sworn, says that he is the attorney for the defendant in the within-entitled action and as
27 such makes this verification; that he has read the foregoing answer and knows the contents thereof and that the same is true to the best of his knowledge, inclination and belief; that the reason why this verification is not made by defendant's officer is that the defendant and all its officers are absent from the State of Minnesota within which affiant resides.

WM. C. WHITE.

Subscribed and sworn to before me this 14th day of March, A. D. 1895.

[NOTARIAL SEAL.] HOWARD T. ARBOTT,
Notary Public, St. Louis County, Minnesota.

That on the 2nd day of July, A. D. 1895, there was filed with the clerk of said court a stipulation extending the time for taking testimony, which said stipulation is, in words and figures, as follows, to wit:

United States Circuit Court, Fifth Division, District of Minnesota.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY, Defendant.

In the above-entitled matter, it is hereby stipulated by and between the counsel for the parties plaintiff and defendant, that the time for taking testimony be and the same is hereby extended for 30 days from the date at which such time would expire under the rules of said court; and further, that no testimony be taken during the month of July, 1895, excepting that under notice therefor, deposition of a foreign witness may be taken during said month if desired, outside of the State of Minnesota.

Dated July 1st, 1895.

J. B. RICHARDS,
Attorney for Plaintiffs.
WM. C. WHITE,
Attorney for Defendant.

That on the 6th day of September, A. D. 1895, there was
28 filed with the clerk of said court the replication of complainant which said replication is, in words and figures, as follows, to wit:

United States Circuit Court, Fifth Division, District of Minnesota.

Replication.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY and UNION TRUST COMPANY, Defendants.

These repliants, complainants, saving and reserving to themselves all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendant Missouri, Kansas & Texas Trust Company, for replication thereunto say that they do and will aver maintain and prove their said complaint to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by these repliants; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto confessed or avoided, is true; all which matters and things these repliants are ready to aver,

maintain and prove as this honorable court shall direct and humbly pray as in and by their complaint they have already prayed.

J. B. RICHARDS,
Solicitor for Complainants, 301 *Burrows B'ld'g, Duluth, Minn.*

That on the 19th day of October, A. D. 1895, the following proceedings were had in said cause in open court, to wit:

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Complainants,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY, Defendant. } No. 177.

JOHN L. FOOTE and EMELINE G. FOOTE, Complainants,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY, Defendant. } No. 179.

Now come J. B. Richards, Esq., solicitor for complainants and Wm. C. White, Esq., solicitor for defendants, and state to the court that said causes grow out of similar contracts and are similar in all respects, whereupon it is, by the court,

Ordered—that said causes be tried as one.

29 Whereupon said causes being regularly called for hearing upon the pleadings, final proofs and arguments of counsel, the complainants appearing by J. B. Richards, Esq., their solicitor and the defendant by Wm. C. White, Esq., its solicitor; thereupon said causes are argued by counsel and it is, by the court,

Ordered—that the further hearing of said causes be postponed until Monday morning at 9.30 o'clock.

That on the 21st day of October, A. D. 1895 the following proceedings were had in said cause in open court, to wit:

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Complainants,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY, Defendant. } No. 177.

JOHN L. FOOTE and EMILINE G. FOOTE, Complainants,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY, Defendant. } No. 179.

This day again come all the parties hereto, by their respective solicitors and further argument is made in said cause to the court, and said cause is duly submitted, and, all parties agreeing thereto, it is, by the court,

Ordered—that all parties herein submit briefs within ten days from this date.

That the evidence submitted to the court in said cause is, in words and figures, as follows, to wit:

United States Circuit Court, Fifth Division, District of Minnesota.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY, Defendant.

Notice for Taking Deposition.

Please to take notice (the) plaintiffs herein wil- take the deposition of the Prudential Life Insurance Cempany, of Newark, New Jersey, a corporation, through any of its officers or agents acquainted with its affairs, all of whom reside out of the State of Minnesota, and more than one hundred (100) miles from any place at which a circuit court of the U. States for the district of Minnesota is appointed to be held by law, for use on behalf of the plaintiff, before William J. Kearns, a notary public in and for Essex county, New Jersey, who is not of counsel, not interested in this action, at
30 the office of said notary public at No. 22 Clinton street, Newark, New Jersey, on the 29th day of July, 1895 at 11 o'clock a. m., and thereafter as the same may be adjourned; and said testimony will be taken in accordance with the provisions of sections 863, 864, & 865 of the Revised Statutes of the United States, and the equity rules.

Dated, July 15th, 1895.

J. B. RICHARDS,
Attorney for Plaintiffs.

To William C. White, Esq., attorney for defendant. M. K. & T. Tr. Co.:

Service of the above notice by copy admitted this — day of July, 1895.

WM. C. WHITE,
Per WAITE,
Defendant's Attorney.

United States Circuit Court, Fifth Division, District of Minnesota.

THEODORE KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs,
vs.
MISSOURI, KANSAS and TEXAS TRUST COMPANY, Defendants,

It is hereby stipulated and agreed that the testimony &c. in the above-entitled action may be taken stenographically by William J. Kearns, a notary public in and for the State of New Jersey, and that afterwards the same may be transcribed in typewriting by him, the said Willian J. Kearns, notary public as aforesaid, out of shorthand into longhand, and that said deposition or testimony shall then be signed by the witness, and that the evidence so taken shall have the same force and effect as if the same were originally taken in the handwriting of the notary, or of the deposing witness, and may be read in court with like force and effect.

Witness our hands this twenty-ninth day of July, eighteen hundred and ninety-five, at Newark in the county of Essex and State of New Jersey.

DANIFL F. BYRNE,
Of Counsel with Pl'ffs.
J. McD. TRIMBLE,
Of Counsel for Def't.

United States Circuit Court, Fifth Division, District of Minnesota.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG Plaintiffs,
vs.
MISSOURI, KANSAS and TEXAS TRUST COMPANY, Defendants.

Present: Daniel F. Byrne, Esquire, of counsel with plaintiffs, John McD. Trimble, Esquire, of counsel with defendant.

31 Transcript of stenographic report of the evidence &c., taken by me, the subscriber, a notary public of New Jersey, at my office 22 Clinton street, in the city of Newark, New Jersey, on Monday the twenty-ninth day of July, eighteen hundred and ninety-five, at eleven o'clock in the forenoon of that day, in pursuance of a stipulation in writing entered into by the counsel of the respective parties hereto and hereunto annexed.

WM. J. KEARNS,
Notary Public in and for New Jersey.

[NOTARIAL SEAL.]

Deposition of J. Henry Huntington, Jr., produced, sworn and examined the twenty-ninth day of July, eighteen hundred and ninety-five, at Newark, in the State of New Jersey, to be read as evidence on behalf of the plaintiffs, in an action between Theodore M. Krumseig and Louise Krumseig plaintiffs and Missouri, Kansas and Texas Trust Company defendant, pending in the circuit court of the United States, fifth division, district of Minnesota, as follows:

J. HENRY HUNTINGTON, JR., a witness produced on the part of the plaintiffs herein, being duly sworn, on his oath says:

Direct examination.

By Mr. BYRNE:

Q. Do you know that the company has an insurance on the life of Theodore M. or Louise. Krumseig?
A. Yes sir.
Q. On which life?
A. Theodore M. Krumseig.
Q. Was a formal application made for insurance on the life of Theodore M. Krumseig?
A. Yes sir.
Q. When was that made?
A. September 5th, 1890.

Q. Is there a policy of insurance now in force on the life of Theodore M. Krumseig?
A. Yes sir.
Q. Who is the beneficiary named in that policy?
A. The Missouri, Kansas & Texas Trust Company.
Q. What is the date of the policy?
A. September 5, 1890.
Q. What is the amount of the insurance?
A. The amount at the time the policy was taken out, $2,208.
Q. Have the premiums been regularly paid on this policy?
A. Yes sir.
32 Q. What is the amount of premium paid?
A. $6.31 quarterly.
Q. Is there a contract between the Prudential Insurance Company and the Missouri, Kansas and Texas Trust Company in regard to this insurance?
A. Yes sir.
Q. Have you the contract in your possession?
A. Yes sir, I have.
Q. Will you produce it?
A. If necessary; yes sir.

Defendant objects to the introduction of the contract between the Prudential Insurance Company of America and the Missouri, Kansas & Texas Trust Company and also to any evidence as to the amount of premium charged for the insurance which the Prudential Insurance Company issued on the life of Theodore M. Krumseig, for the reason and on the grounds that the same are immaterial and and irrelevant and do not tend to sustain any proper issue in this case.

Objection renewed.

(Original contract between the Prudential Insurance Company of America, Newark, New Jersey and the Missouri, Kansas and Texas Trust Company of Kansas City, Missouri dated the 27th of February, 1889 is produced and offered in evidence by the plaintiffs and the same is marked Exhibit A for the plaintiffs.)

It is stipulated and agreed between the counsel of the respective parties hereto that a copy of said contract may be annexed to these depositions, and the production of the original is waived.

Q. Is this agreement still in force between your company and the Missouri, Kansas and Texas Trust Company?
A. Yes sir.
Q. And the insurance upon the life of Theodore M. Krumseig under this agreement is also still in force?
A. Yes sir.
Q. Please state the number of the policy on the life of Theodore M. Krumseig.
A. No. 4452.
Q. Is that an original insurance or a reinsurance?
A. Original insurance. There is no reinsurance, not with that company.

Q. What is your name and address?
A. J. Henry Huntington Jr. I reside at 34 Johnson avenue, Newark, N. J.
Q. What is your business?
33 A. Chief clerk, ordinary branch, Prudential Insurance Company of America.
Q. Are you familiar with all the transactions of the company's business in that branch?
A. In so far as the practical work is concerned, yes.
Q. That's all.

Cross-examination.

By Mr. TRIMBLE:

Q. The policies issued under the contract which you have introduced in evidence were issued, were they not, upon what is called the renewable reducing term plan?
A. Yes, sir.
Q. How long has your company been engaged in issuing policies upon that plan?
A. To my recollection ever since that contract was in force with your company.
Q. Did you issue policies upon that plan to individuals?
A. No, only to some building and loan associations.
Q. Have you quit the business of issuing policies upon that plan?
A. Yes, in that we make no more contracts of that sort. We are bound by old contracts, of course.
Q. Do you know of any other company that does issue policies on that plan?
A. Not to my knowledge.
Q. Are the premiums which are provided for in this contract less or greater than the ordinary term policy?
A. They are less.
Q. State whether it is usual in life insurance matters to charge a higher rate of premium where the premium is paid quarterly than if it was paid annually?
A. Yes.
Q. Would there be still a higher premium if it was paid monthly instead of quarterly?
A. Yes.
Q. Do you know, Mr. Huntington, whether the rates provided for in the contract introduced in evidence are low rates?
A. Yes sir, they are very low.
Q. What expense, if any, was your company put to in the matter of this insurance as to collecting premiums, or otherwise?
A. None whatever. We constituted the trust company our general agent and looked to them to assume all the expenses for
34 the collection of the premiums. With regard to medical examinations, I think that is covered in the contract.
Q. The trust company then assumes all the expense of collecting the premiums, and also the risk of not collecting them at all?

A. Yes sir.

Q. You know nothing of your own knowledge what arrangement the trust company had with Mr. Theodore M. Krumseig out of which this insurance arose?

A. No sir, I do not.

Q. If any individual—any single individual should apply to your company for insurance upon this plan, would it be issued to him?

A. It would be an arbitrary matter to be decided by the manager, but without doubt not at that rate.

Q. By whom was the application made for the insurance referred to in this deposition by you?

A. The Missouri, Kansas and Texas Trust Company.

Q. That's all.

J. HENRY HUNTINGTON, JR.

Sworn to before me the day and year aforesaid.

WM. J. KEARNS,

[NOTARIAL SEAL.] *Notary Public of New Jersey.*

EXHIBIT "A" COPY.

This agreement made and entered into this twenty-seventh day of February, in the year one thousand, eight hundred and eighty-nine by and between the Prudential Insurance Company of America, of Newark, N. J., hereinafter designated as the Prudential, and the Missouri, Kansas and Texas Trust Company, of Kansas City, Mo., hereinafter designated as the trust company,

Witnesseth: That the Prudential in consideration of the premiums hereinafter mentioned and upon the following terms and conditions agrees to insure in favor of the trust company the lives of certain persons whose physical condition may be acceptable to the said Prudential:

First. The persons whose lives are proposed for insurance must be debtors unto the trust company in a sum equal, at least, to the amount of insurance requested.

Second. The policies of insurance shall be issued upon the renewable reducing term plan. They may be severally renewed for not more than ten successive years and shall be non-participating. The premiums shall be adjusted on the basis of a term insurance for one year and the amount of insurance under each policy shall decrease each year according to the provisions of the seventh section of this agreement.

35 Third. The trust company shall furnish to the Prudential for approval a list of medical examiners by whom the persons whose lives are to be insured shall be examined.

Fourth. The expense of conducting the examination shall be borne by the Prudential.

Fifth. The rates of premium per $1,000 shall be as given in the following table, by which the rate to be paid in each and every year over which each policy extends is that corresponding to the actual age of the life insured in that year.

Premiums per $1,000.

Age.	Annual.	Semi-annual.	Quarterly.
21	$9 50	$4 94	$2 52
22	9 64	5 01	2 55
23	9 81	5 10	2 60
24	9 99	5 19	2 65
25	10 17	5 29	2 70
26	10 37	5 39	2 75
27	10 57	5 50	2 80
28	10 80	5 62	2 86
29	11 02	5 73	2 92
30	11 27	5 86	2 99
31	11 52	5 99	3 05
32	11 80	6 14	3 13
33	12 09	6 29	3 20
34	12 38	6 44	3 28
35	12 70	6 60	3 37
36	13 02	6 77	3 45
37	13 36	6 95	3 54
38	13 74	7 14	3 64
39	14 11	7 34	3 74
40	14 50	7 54	3 84
41	14 93	7 76	3 96
42	15 41	8 01	4 08
43	15 97	8 30	4 23
44	16 65	8 66	4 41
45	17 42	9 06	4 62
46	18 33	9 53	4 86
47	19 31	10 04	5 12
48	20 37	10 59	5 40
49	21 51	11 19	5 70
50	22 77	11 84	6 03
51	24 10	12 53	6 39
52	25 58	13 30	6 78
53	27 18	14 13	7 20
54	28 88	15 02	7 65
55	30 75	15 99	8 15
56	32 78	17 05	8 69
36 57	34 92	18 16	9 25
58	37 25	19 37	9 87
59	39 80	20 70	10 55
60	42 63	22 17	11 30
61	46 02	23 93	12 20
62	49 73	25 86	13 18
63	53 75	27 95	14 24
64	58 16	30 24	15 41
65	62 92	32 72	16 67
66	68 13	35 43	18 05
67	73 79	38 37	19 55
68	78 89	41 54	21 17
69	86 45	44 95	22 91
70	93 56	48 65	24 79

Sixth. The trust company shall be allowed a commission of twenty-five per cent. on the premiums paid in the first year of each policy and a commission of ten per cent. on the premiums paid in each and every year thereafter during the (continuance) of the policy.

Seventh. The amount of insurance to be mentioned in each policy shall be the amount of insurance at the beginning of its first year, and the amount of insurance under each and every policy shall decrease year by year in the proportion exhibited in the appended table, wherein the initial amount is $1,000.

First	year	insurance	is	$1,000
Second	"	"	"	902
Third	"	"	"	829
Fourth	"	"	"	748
Fifth	"	"	"	660
Sixth	"	"	"	562
Seventh	"	"	"	455
Eighth	"	"	"	337
Ninth	"	"	"	207
Tenth	"	"	"	70

Eighth. When claim is made by the trust company for the insurance under any policy, the said trust company shall furnish to the Prudential proofs of the death of the insured on the forms to be furnished by the Prudential for that purpose. It is also understood and agreed that no claim shall be made by the trust company for an amount greater than the amount of indebtedness of the person whose life was insured to the trust company at the time of his, or her, death.

37 Ninth. Unless otherwise arranged by special agreement the premiums on the policies issued by the Prudential shall be due and payable at the home office of the said Prudential in the city of Newark, New Jersey, on the date mentioned in the policies, and if not so paid on any policy, or policies, such corresponding policy, or policies, shall be null and void.

Tenth. The policies of insurance are issued by the Prudential and accepted by the trust company with the distinct understanding and agreement that if any of the insured within two years from the date of the policy shall commit suicide, or shall visit, or travel, in the torrid zone, without the written consent of the Prudential, or shall personally engage in any specially hazardous occupation or pursuit, as mentioned in the application, then the policies of insurance upon their lives shall cease and determine and be of non-effect and void.

Eleventh. The obligation of the Prudential to issue new policies to the trust company may be terminated at any time after thirty days' notice to the trust company.

In witness whereof the parties to this agreement have by their

respective presidents and secretaries signed and delivered the same the day and year first above written.

(Signed) JOHN F. DRYDEN,
President Prudential Ins. Co of America.

(Signed) EDWARD S. JOHNSON,
Secretary Prudential Ins. Co. of America.

(Signed) J. E. McKEIGHAN,
President Missouri, Kansas & Texas Trust Co.

(Signed) E. J. DAVISON,
Secretary Missouri, Kansas & Texas Trust Co.

UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

I, William J. Kearns, a notary public in and for the State of New Jersey, duly appointed by the governor of the said State of New Jersey, and commissioned and sworn, do hereby certify that on the 29th day of July, in the year of our Lord one thousand eight hundred and ninety-five, I was attended by Daniel F. Byrne, Esq., of counsel with the plaintiffs herein, and by John McD. Trimble, Esq., of counsel with the defendant herein, and by the witness, J. Henry Huntington, Esq., who was of sound mind and lawful age,
38 and the witness, said J. Henry Huntington, Jr., by me first carefully examined and cautioned, and sworn, to testify the truth, the whole truth, and nothing but the truth, and the deposition of said J. Henry Huntington, Jr., the witness aforesaid being by me reduced to typewriting, in pursuance of the stipulation signed by counsel and hereunto annexed, and after carefully having read the same to the said witness, he subscribed the same in my presence.

And do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal this twenty-ninth day of July in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nin-teenth year.

[NOTARIAL SEAL.] WM. J. KEARNS,
Notary Public of New Jersey.

United States Circuit Court, Fifth Division, District of Minnesota.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs, }
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY *et al.*, Defendant-. }

At ten o'clock a. m., September 6th, 1895, the complainant in the above-entitled action appears in person and by his attorney, J. B. Richards, Esq., and the taking of testimony is deferred, through the absence of the attorney for the defendant-, until eleven o'clock a. m. this date.

At eleven o'clock a. m., the attorney for the defendant- being absent, the taking of testimony is further deferred until 10 o'clock a. m., September 17th, 1895.

September 17th, 1895, at ten o'clock a. m. pursuant to above, the complainant in the above-entitled action being present in person and by attorney, and the attorney for the defendant- being present, the examination is proceeded with.

Stipulation.—"It is stipulated by and between the respective counsel that the testimony in this case may be taken in shorthand and afterwards transcribed in longhand and put in typewriting, the same to be thereafter subscribed by the witnesses."

39 In accordance with the above stipulation Clarence R. Smith was sworn in manner provided by law.

THEODORE M. KRUMSEIG, being duly sworn, on examination testifies as follows:

Q. You are the plaintiff in this case, one of them, Mr. Krumseig?
A. Yes, sir.
Q. What is your age?
A. 33 years.
Q. With what agent of the defendant, The Missouri, Kansas & Texas Trust Company, did you have the dealings leading up to the making and closing of the loans in this case?
A. W. P. Mosier.
Q. Of Duluth?
A. Yes, sir.
Q. What was your age at the date of the contract that was made?
A. 28.
Q. Did you submit to a medical examination prior to the making and closing of a loan?
A. Yes, sir.
Q. When was that had?
A. I don't remember the date. It was right after I made the application for the (*laon*). When I made the application I was informed that I would have to pass examination.
Q. What was said about that?

(Question objected to; also all evidence concerning the examination of the contract for examination as incompetent, immaterial and irrelevant, and further, for the reason that the application, the written application for insurance is the best evidence as to anything of that nature.)

(Question withdrawn.)

By Mr. WHITE: I move that the answer be stricken out—that part of the answer which states that he was compelled to undergo a medical examination be stricken out as not responsive.

(Motion resisted.)

(Exception.)

Q. Did your wife take any part in the conversation or transac-

tions with Mr. Mosier leading up to the making or closing of that contract?

A. No, sir.

40 Q. You acted for yourself and her in making all arrangements?

A. Yes, sir.

(Witness is shown the original loan application signed by himself, pursuant to which the (*the*) contract was made and closed, and his attention is called to that portion of the same wherein (*is*) says "I agree to execute and deliver to the said company ten promissory notes, each of the sum of $360 payable in monthly installments of $30 commencing at date of signing contract," and is asked as follows:)

Q. Was there anything said before signing the same, or was there any special or agreed price fixed upon or talked over between you and the agent of the company at the time before actually signing the notes and mortgage, and as to the price which you were to pay as consideration for the agreement in the mortgage to cancel the debt in case of your death?

(Objected to as incompetent.)
(Exception.)

A. No, sir.

Plaintiffs offer in evidence the application for the loan, marked "Application No. 354," signed by the plaintiff, Theodore M. Krumseig, dated July 29th, 1890, with the examiner's report connected therewith marked "Plaintiffs' Exhibit B."

(Objected to as incompetent and immaterial.)
(Exception.)

Plaintiffs next offer in evidence the policy of insurance issued under date of September 5th, 1890, by the Prudential Insurance Company of America, of Newark, New Jersey, running to the Missouri, Kansas & Texas Trust Company, of Kansas City, Missouri, No. 4452, covering the life of Theodore M. Krumseig, marked "Plaintiffs' Exhibit C."

The copy offered is hereby stipulated to have the same effect as the original, subject to objection, and the signatures being waived.

(Objected to as incompetent, irrelevant and immaterial.)
(Exception.)

It is admitted that the Missouri, Kansas & Texas Trust Company, for the purposes of this case, was not a building & loan association or society.

41 Q. The amount of cash you actually received at the time of the loan was what?

A. $1,970.

Cross-examination.

By Wm. C. White, Esq.:

Q. The difference between $1,970 and $2,000 was reserved by the company as a first payment—the first of these monthly payments?

A. Yes, sir.

Q. The signature of this loan application is your signature and was written by you at the time it bears date?

A. Yes, sir.

Plaintiff next offers in evidence articles of association of defendant (by copy), as Exhibit D, for the purpose of showing the purposes for which defendant was organized, special reference being made to article seventh.

Objected to as incompetent, irrelevant and immaterial, but not on the ground of its not being the original.

Exception.

W. H. Squier, sworn on behalf of the plaintiffs, on examination testifies as follows:

Direct examination.

By J. B. Richards, Esq.:

Q. Mr. Squier, what is your name, age, residence and occupation?

A. Duluth is my residence. In the insurance business—life-insurance business.

Q. What is your age?

A. 28.

Q. How long have you been engaged in the life-insurance business?

A. Five years.

Q. Are you familiar with the rates of premium of the different leading companies of the United States on what is known as the ten year term non-participating plan?

A. Yes, sir.

Q. On this plan is it the practice of the companies to charge an increasing annual rate of premium as the age increases, or is it the rate fixed once for all at the date of contract?

A. It is fixed at the beginning.

42 Q. With what company are you now connected?

A. The Mutual Life Insurance Company of New York.

Q. Will you give their rate of premium per thousand at the age of 28 and upwards to the age of 40 on that plan?

(Question objected to as incompetent, irrelevant and immaterial.)
(Exception.)

A. At the age of 28, $13.76 per year; 29, $14; 30, $14.26; 31, $14.54; 32, $14.84; 33, $15.17; 34, $15.52; 35, $15.89; 36, $16.31; 37, $16.75; 38, $17.25; 39, $17.78; 40, $18.37.

Q. Was this the rate of premium in 1889 and 1890?

(Objection; same reason.)
(Exception.)

A. It was, yes, sir.

Q. Is the rate you have given of the Mutual Life of New York higher or lower than that of other companies on the same plan and age?

(Objection for the same reason and because the witness has not shown knowledge.)

A. It is as high as that of any company.

Q. Do you know the rates of other companies, leading companies in the United States, on that plan?

A. I know the rates of some of them. In answer to the previous question I mean the rate is as high as those that I know.

Q. Will you give the comparative rates of other companies on the same plan for the age of 28?

(Objection, same ground.)
(Exception.)

A. The Equitable of Iowa is $11.84; the Michigan Mutual $11.65; the Northwestern of Milwaukee $12.26; the Penn Mutual of Philadelphia $12.55; the United Central of Cincinnati, $11.69; the Vermont Life, $11.65.

Q. Now, were those rates generally published and known in the United States in 1889 and 1890?

(Objection, same reason.)
(Exception.)

A. Yes, sir. This book from which I quote was not published in that year.

Q. In what year was it published?

A. In 1892; it was published in 1892; they were the rates in force at that time.

43 Q. I will ask you, from your knowledge of the life-insurance business, whether there is any material change in the rates from one year to another?

(Objection, same reason.)

A. No, there is no material change.

Q. Do you know from your experience that the rates published are the rates on which the policies are issued?

(Objection, same reason.)
(Exception.)

A. I do.

Q. Was it possible in the year 1890 for a private individual to obtain insurance for sums less than $1,000?

(Objection, same reason.)
(Exception.)

A. It was if he was a good risk physically.

Cross-examination.

By Mr. WHITE:

Q. Where did you get these comparative statistics?

A. In the first instance I got them from the Mutual Life Insurance Company, from their own rate book. The others are from a book published by A. J. Flitcraft, of 609 Maple avenue, Oak Park, Illinois. It is a book that he publishes every year giving the premium rates of the companies and their forms of policies, etc., the rates being those of the companies themselves.

Q. Do you know that of your own knowledge?

A. No, that is my understanding.

Q. What do you mean by a non-participating policy?

A. A policy that has no share in the profit earnings of the company; simply a promise to pay if the man dies.

Q. And if he does not die he gets nothing?

A. Yes.

Q. I suppose you know nothing personally of your own knowledge about the relative standing of the companies that you have given statistics of, do you?

(Objected to as incompetent and irrelevant and not proper cross-examination.)

A. No, sir, nothing only what I have learned from the statements of the insurance department.

44 Q. Does that book that you have show the comparative rates of all sorts of policies issued by the companies named?

A. Yes, sir, very nearly all at any rate; I think all.

W. H. SQUIER.

WILLIAM E. COVEY, sworn on behalf of the plaintiff, on examination testifies as follows:

Direct examination.

By Mr. RICHARDS:

Q. What is your name, age, residence and occupation?

A. William E. Covey. Duluth. 46. Life insurance.

Q. How long have you been engaged in that business?

A. About nine years.

Q. Are you familiar with the rates of premium of the different leading companies of the United States on what is known as the ten-year term non-participating plan?

A. In a general way.

Q. How would you answer that question—yes, or no?

A. Yes.

Q. On that plan is it the practice of the companies to charge an increasing annual rate of premium as the age advances, or is the rate fixed once for all at the date of the contract?

A. Usually fixed at the age with the old line companies. Assessment companies vary; they don't issue what is termed a ten-year renewable term.

Q. With what company are you connected?
A. Equitable Life Assurance Society of the United States.
Q. Do you know their rate of premium per thousand for insurance at the age of 28 on the ten-y'r term non-participating plan?

(Objected to as incompetent and immaterial.)
(Exception.)

A. $13.76.
Q. Will you give the rate for the age of 31?

(Same objection.)
(Exception.)

A. $14.54.
Q. Was that the same rate in 1889 and 1890?

(Same objection.)
(Exception.)

A. I couldn't swear; my impression is that it was. They have undergone some of these terms a slight change.
45 Q. In what period of years?
A. In the last three or four years.
Q. Advancing or decreasing?
A. A very slight advance where the change has occurred.
Q. And the figures that you have given are the advanced rate?
A. Yes.
Q. Is the rate which you have given, of the Equitable, higher or lower for the age of 28 and 31 than those of other companies on the same plan and ages?

(Objection, same ground; and because no knowledge has been shown.)
(Exception.)

A. I couldn't state positively; my impression is that the rate of the Equitable and the Mutual Life are as high as any of the same class; on that class of insurance there are some that are lower.
Q. How is your knowledge derived as to the rates of the companies?
A. Printed rates by the companies.
Q. Is it the custom in the life-insurance business of the companies to publish their rates of premium?
A. It is.
Q. Is that the universal rule.
A. It is.
Q. Could they do business unless they did publish their rates, more than mere local business?

(Same objection.)
(Exception.)

A. I don't see how they could.
Q. The rates that are published in the books and pamphlets are reliable as rates on which they will issue policies.

(Same objection.)
(Exception.)

A. Anything issued by the company. Their own rates would be reliable.

Q. Do you know the comparative rates of other companies than the Equitable on this ten-year renewable plan for the age of 28?

A. No; except by comparison—to give exact figures.

Q. You have the tables, published tables, have you?

46 A. I happen to have in my pocket, here, two or three forms, or rates of two or three different companies.

Q. Will you give the comparative rates of those you have—on the same plan—ten-year renewable, non-participating, age of 28.

(Objected to as immaterial)
(Exception.)

A. Manhattan Life of New York at age 28 the rate is $14.35.

Q. Is that non-participating or participating?

A. Well, there is a surrender paid-up value at the end of the ten-year period or periods to them in case of lapse. It is not a participating policy, strictly speaking, but in case of a lapse prior to the end it has a paid-up value.

Q. I am speaking more particularly, Mr. Covey, of a strictly non-participating?

A. I don't think I can give you any rates for that. This would be called a non-participating policy, flat rate, called renewable term insurance.

Q. These rates, that you have mentioned and given, were those upon which insurance upon the terms proposed could be obtained in the years 1889 and 1890?

A. I couldn't swear as to that.

Q. Would there be any material difference?

(Objection, same ground.)
(Exception.)

A. No, sir.

Q. Your knowledge as to the rates is derived, as I understand it, from the published rates to which you have access in your business and also, I suppose, from your competition running up against competing rates of other companies in actual business?

(Objected to on same grounds, and as leading.)
(Question withdrawn.)

A. My knowledge is gained from the printed rates of the company.

Q. You mean to say that you have no actual, personal knowledge?

A. I have no knowledge except from their printed rates.

Q. Agents, in writing insurance, depend usually, if not almost wholly, on the printed rates of the company?

A. Yes.

47 Q. Was it possible in 1889 and 1890 for any private individual to obtain insurance on satisfactory risks for sums less than $1,000?

(Objections, same grounds.)
(Exception.)

A. I presume it was.

WM. E. COVEY.

Plaintiff rests.

Hearing continued until 10 a. m., Sept. 18th, for the taking of testimony for the defendant.

The Prudential Insurance Company of America.

Home office, Newark, N. J.

Number 4452. Amount, $2,208.

Age, 28.

Ordinary branch.

Doth hereby insure the Missouri, Kansas and Texas Trust Company of Kansas City, Missouri, in the initial amount of twenty-two hundred eight dollars upon the life of Theodore M. Krumseig of Duluth county of St. Louis, State of Minnesota, in accordance with the terms and conditions of the contract between the above-named corporations, dated February 27th 1889.

In witness whereof, the said The Prudential Insurance Company of America at its office in the city of Newark New Jersey has by its president and secretary signed and delivered this policy this 5th day of Sept. one thousand eight hundred and ninety.

—— ——, *Pres't.*
—— ——, *Sec'y.*

Application No. —.

I hereby make application to the Missouri, Kansas and Texas Trust Co. of Kansas City, Mo., for a loan of $2,000.00 upon lot No. seven (7) block No. sixty-two (62) of Portland Division addi-
48 tion, city of Duluth county of St. Louis State of Minnesota, which property I now own in fee and the abstract to which accompanies this application.

My full name is Theodore M. Krumseig. Address in full (street and number). 1014 East Third Str. Age, 28 years. Are you single or married? Married. Name of wife? Louise. Have you a family? If so, number of children and how many are dependent on you for support? Two children, depending on me, wife and 2 children. Present occupation? Book-keeper. How long? 4 years. Former occupation? Agent. How long? 2 years. Income? (Please state amount and from what sources.) Salary $80.00 per month. Name present employer? Williams, Upham & Co. Refer to N. C. Harvey & Co., Duluth, Plumbing Co., Williams, Upham & Co. and R. J. Ryan. Rental value, monthly? Thirty dollars (30.00). What is the street number and name of street? 1014 East Third St. Has grade been established? Yes. What is the size of the lot? 25 x 140

ft. Is the street in front paved? Yes. If so, with what? Gravel (Telford). Flagged? 8 ft. sidewalk (plank) both sides of street. Sewered? Yes. Are there gas pipes? Yes. Water pipes? Yes. Means of transportation to this land—cable or horse car? Horse R. R. being changed to electric. How near is it to land? 3 blocks. What was the assessed value of this property for taxation last year? In whom is the title to said premises vested? Theodore M. Krumseig. Are there any mortgages, judgments, taxes, special tax bills or other liens against the property? If so, describe them? Mortgage of $1,500.00 and note of $150.00 which I wish to pay off and use balance to finish basement, grade and sod lot, etc. The house cost $1,500.00. Amount asked for $2,000.00. The value of the lot is $1,600.00. Total value $3,100.00.

In consideration of the above premises I agree to execute and deliver to the said company 10 promissory notes, each of the sum of $360, payable in monthly installments of $30.00 commencing at date of signing contract. The said notes cover principal sum loaned, interest and cost of guarantee to cancel debt in case of death, and shall be secured by good and sufficient deed of trust or mortgage executed by myself and wife on said ground and improvements.

The contract hereafter to be entered into, if my application should be accepted and contract entered into in writing between myself and said company, shall provide that the mortgage or deed of trust given to secure the above notes shall contain a clause guaranteeing, in case of my death before payment of any unpaid installments,
49 a release of unpaid portion of debt, if I shall have promptly paid previous installments and kept other conditions.

As part of foregoing condition, I agree, before acceptance of this application and the execution of said contract, to pass such medical examination as may be required by said company, and to pay said company the usual fee of $3.00 therefor; and to pay all fees for recording deed of trust or mortgage.

This application and proposal to stand open for acceptance for 10 days from date hereof.

(Signed) THEODORE M. KRUMSEIG.

Date July 29th, 1890.

Examiner's Report.

Ground made or natural, natural; locality healthy, yes; neighborhood improving, yes; steady, regular or spasmodic, steady; adjoining premises are occupied, viz: residences. The amount of rent the premises would bring 30 to 35 the street improvements are all made. The access by steam or street cars, Superior St. 3 blocks, 4th St. 1 block, both to be electric lines. Would a house of the value asked for be suitable for that locality. Similar to many houses in the locality.

I have carefully examined the above-described property.

The ground is worth	$1,600
The improvements are worth.....	1,500
Total	3,1000

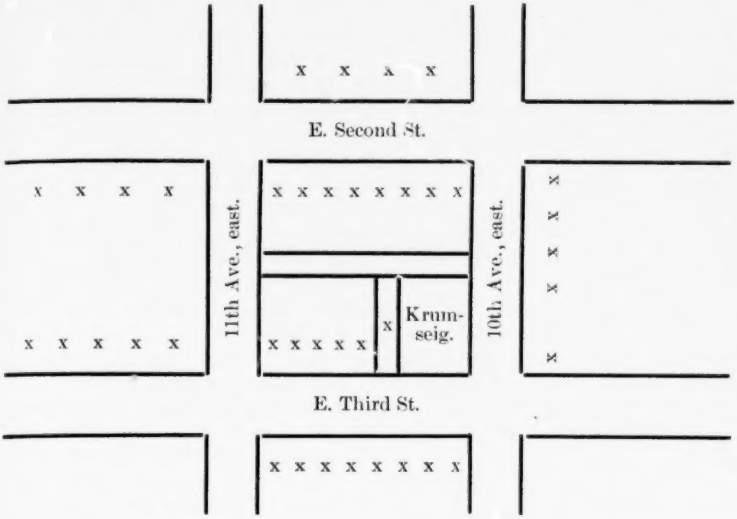
Borrower, character good; standing good. Book-keeper.

(Give standing (of) the community, character, occupation, success therein, etc.)

Not personally acquainted with him but hear only good of him.

Show on diagram location of this property and of other residences.

50



Date Aug. 11, 1890.

O. P. STEARNS, *Examiner.*

Know all men by these presents, that we, the undersigned, have and do hereby associate ourselves together for the purpose of forming and organizing a corporation under article XXI of chapter 21 of the Laws of the State of Missouri, as found in 1885, Session Laws of said State, page- 103 and 107, approved March 20th, 1885, and as amended by act of legislature of said State, approved March 31st, A. D. 1887, page- 116 and 117 of Acts of 1887.

First. The corporate name of the said proposed corporation is and shall be Missouri, Kansas & Texas Trust Company.

Second. The said proposed corporation is to be located in the city of Kansas, State of Missouri, with branch office in the city of St. Louis, if desired, or such other place or places as may be designated by the board of directors of said proposed corporation.

Third. The amount of the capital stock of said proposed corporation authorized by this agreement is one million dollars, divided into ten thousand shares of the par value of one hundred dollars each, and the amount of said capital stock actually subscribed in good faith at the time of filing this agreement is three hun-
51 dred and sixty-four thousand, three hundred dollars, more than one-half of which capital stock so subscribed has been

actually paid up in lawful money of the United States, and is in the custody of the persons named as the first board of directors.

Fourth. The names and places of residence of the several shareholders and the number of shares subscribed by each, are as follows:

Names.	Residences.	No. of shares.
A. E. Stilwell	Kansas City, Missouri	3,623 shares.
J. E. McKeighan	St. Louis, Missouri	One share.
E. L. Martin	Kansas City, Missouri	One share.
L. E. Davison	Kansas City, Missouri	One share.
S. M. Kennard	St. Louis, Missouri	One share.
Charles M. Hays	St. Louis, Missouri	One share.
H. A. Lloyd	St. Louis, Missouri	One share.
Winthrop Smith	Philadelphia, Pennsylvania	One share.
George C. Smith	St. Louis, Missouri	One share.
Charles A. Dean	Omaha, Nebraska	One share.
C. E. Granniss	New Haven, Connecticut	One share.
J. H. Richards	Fort Scott, Kansas	One share.
L. L. Culver	St. Louis, Missouri	One share.
Charles L. Hyde	New York, N. Y.	One share.
B. F. Hobart	St. Louis, Missouri	One share.
M. C. Curtis	Kansas City, Missouri	One share.
Edward W. Marsh	Bridgeport, Connecticut	One share.
E. J. Davison	Kansas City, Missouri	One share.
S. C. Douglass	Kansas City, Missouri	One share.
A. A. Mosher	St. Louis, Missouri	One share.
B. P. Waggener	Atchison, Kansas	One share.

Fifth. The number of the board of directors is twenty-one and the names of those agreed upon for the first year are as follows: J. E. McKeighan, A. E. Stilwell, E. L. Martin, L. E. Davison, S. M. Kennard, Charles M. Hays, H. A. Lloyd, Winthrop Smith, George C. Smith, Charles A. Dean, C. E. Granniss, J. H. Richards, L. L. Culver, Charles L. Hyde, B. F. Hobart, M. C. Curtis, Edward W. Marsh, B. P. Waggener, E. J. Davison, S. C. Douglass, A. A. Mosher.

Six. The number of years the said corporation shall continue is fifty.

Seventh. The purposes for which said corporation is formed are as follows:

First. To receive moneys in trust, and to accumulate the same at such rates of interest as may be obtained or agreed on, or to allow such interest thereon as may be agreed not exceeding in either case the legal rate; second, to accept and execute all such trusts and perform such duties of every description as may be com-
52 mitted to them by any person or persons whatsoever, or any corporations, or may be committed or transferred to them by order of any of the courts of record of this State or other State, or of the United States; third, to take and accept by grant, assignment, transfer, devise or bequest, and hold any real or personal estate or trusts created in accordance with the laws of this State, or other

States, or of the United States, and execute such legal trusts in regard to the same, on such terms as may be declared, established, or agreed upon in regard thereto, or to execute or guarantee any bond or bonds required by law to be given in any proceeding in law or equity in any of the courts of this State or other State, or of the United States; fourth, to act as agent for the investment of money for other persons, and as agent for persons and corporations for the purpose of issuing, registering, transferring or countersigning the certificates of stock, bonds or other evidence of debt of any corporation, association, municipality, State or public authority, on such terms as may be agreed upon; fifth, to accept from and execute trusts for married women, in respect to their separate properties, whether real or personal, and act as agents for them in the management of such property, and generally to have and exercise such powers as are usually had and exercised by trust companies; sixth, to act as guardian or curator of any infant or insane person, under the appointment of any court of record having jurisdiction of the person or estate of such infant or insane person; seventh, to guarantee the fidelity and diligent performance of their duty of persons holding places of public or private trust; eighth, to loan money upon real estate and collateral security, and improve such real estate with such loans for the better securing the same, and execute and issue its notes and debentures payable at a future date, and to pledge its mortgages on real estate and other securities, as security therefor; ninth, to buy and sell all kinds of Government, State municipal and other bonds, and all kinds of negotiable and non-negotiable paper, stocks and other investment securities.

Witness our hands and seals this 8th day of February, A. D. 1889.

JNO. E. McKEIGHAN.	[SEAL.]
A. E. STILWELL.	[SEAL.]
SAM. M. KENNARD.	[SEAL.]
A. A. MOSHER.	[SEAL.]
CHAS. M. HAYS.	[SEAL.]
H. A. LLOYD.	[SEAL.]
GEO. C. SMITH.	[SEAL.]
L. E. DAVISON.	[SEAL.]
E. J. DAVISON.	[SEAL.]
M. C. CURTIS.	[SEAL.]

53 STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered that on the 8th day of February, A. D. 1889, personally appeared before the undersigned, a notary public in and for the said city of St. Louis, J. E. McKeighan, Sam. M. Kennard, A. A. Mosher, Charles M. Hays, H. A. Lloyd and George C. Smith, who each are personally known to me to be the persons described in the foregoing agreement and who executed the foregoing agreement, and severally acknowledged that they and each of them executed the same as their free act and deed.

In witness whereof, I have hereunto set my hand and seal at said city of St. Louis, the day and year first hereinbefore written.

My term of office expires on the 20 day of September, 1892.

[L. S.] R. B. MERIWETHER,
Notary Public.

STATE OF MISSOURI, } ss:
County of Jackson, }

Be it remembered that on the 11th day of February, A. D. 1889, personally appeared before the undersigned, a notary public within and for the said county of Jackson, A. E. Stilwell, L. E. Davison, E. J. Davison, and M. C. Curtis, who each are personally known to me to be the persons described in the foregoing agreement and who executed the foregoing agreement, and severally acknowledged that they and each of them executed the same as their free act and deed.

In witness whereof I have hereunto set my hand and seal at said county of Jackson the day and year first hereinbefore written.

My term of office expires on the 26th day of July, 1891.

[L. S.] AMZI D. LEECH,
Notary Public, Jackson County, Mo.

Filed for record and duly recorded in my office this 12th day of Feb'y, 1889, at 9 a. m.

R. T. HINDE, *Recorder,*
By W. H. WINSHIP, *Deputy.*

STATE OF MISSOURI, } ss:
County of Jackson, }

I, O. H. Queal, recorder of deeds within and for the county
54 of Jackson, aforesaid, do hereby certify that the above and foregoing is a full, true and complete copy of the articles of association, acknowledgment and note of record thereon of the "Missouri, Kansas & Texas Trust Company" as the same appears of record in my office in Book Series B 330 page 579 and following.

In testimony whereof, I hereunto set my hand and affix the seal of said office, at Kansas City, Mo., this 16th day of Sept. A. D. 1895.

O. H. QUEAL, *Recorder,*
By M. A. PURSLEY, *Deputy.*

Def't's Ev.

SEPTEMBER 18TH, 1895—10 o'clock a. m.

W. H. SQUIER, sworn on behalf of the defendant, on examination testifies as follows:

Direct examination.

By Mr. WHITE:

Q. Mr. Squier, you are the same W. H. Squier who testified in this matter now pending on the part of the plaintiff on the 17th day of September, are you not?

A. Yes, sir.

Q. Are you familiar with the rates of premiums of different leading companies of the United States for ten-year non-participating endowment policies?

A. Yes, sir; some of the companies.

Q. The same companies that you testified concerning the rate for ten-year-term non-participating policies yesterday?

A. Some of them, yes sir; not all.

Q. You are also familiar with the rates charged for that form of non-participating endowment policy by the Mutual Life Insurance Company of New York?

A. Yes, sir.

Q. That is the company, I believe, which you represent?

A. Yes, sir.

Q. Will you explain what is a ten-year non-participating endowment policy?

(Objected to as being irrelevant and immaterial.)

A. A ten-year endowment policy non-participating would be one issued payable at the end of ten years in cash to a man if he were living, or, in case of previous death, to the beneficiary of his estate, and would have no share in the profit earnings of the company during the ten years.

55 Q. He would get then—all his representative or beneficiary would get if he died within the ten years would be one thousand dollars on a one-thousand-dollar policy?

A. That's all.

Q. Will you give the rate of premium per thousand at the age of 28 and upwards to the age of 40 on such a policy in the Mutual Life Insurance Company of New York?

(Objected to as irrelevant and immaterial, there being nothing in the contract between plaintiff and the defendant in any way resembling any endowment insurance plan of premium or policy.)
(Exception.)

A. Age 28, $91.80; 29, $91.90; 30, $92; 31, $92.10; 32, $92.20; 33, $92.30; 34, $92.40; 35, $92.60; 36, $92.70; 37, $92.90; 38, $93.10; 39, $93.20; 40, $93.40.

Q. Was this the rate of premium in 1889 and 1890?

(Same objection.)
(Exception.)

A. So far as I know it was, yes, sir; it is the only rates the company has ever had to my knowledge.

Q. That is the published rates?

A. The published rates; that is, the Mutual Life Insurance Company of New York.

Q. How do other companies that you have knowledge of compare with the Mutual Life as to the amount of their charge for similar policies?

(Objected to as irrelevant and immaterial and on same grounds as specified above.)
(Exception.)

A. They are about the same—a trifle less, I should judge, than the other two I have at hand.

Q. That is, the Mutual Life is?

A. Yes, a trifle less.

Q. What are the other two that you speak of?

A. The Connecticut General of Hartford, Connecticut, and the Travelers' Life Insurance Company of Hartford, Connecticut.

(Same objection.)

(Exception.)

Q. There is no more than a dollar or two of difference in the charges of these companies?

56 A. No, sir, less than two dollars in both of these cases.

(All this evidence is objected to, covering the plan of proof of endowment rate.)

(Exception.)

Q. Were those rates in force in 1889 and 1890?

A. I think so; I couldn't swear as to that; I think they were.

Q. The book in which those rates are was published in 1892?

A. Yes, in 1892.

Q. And they were the rates in force at that time?

A. Yes, sir.

Q. In such rates as these is there any material change from one year to another?

A. No, nothing material.

Q. Do you know from your experience that the rates published are the rates on which the policies are issued?

A. Yes, sir.

Q. You get these comparative statistics from the same source that you got the (stasti-tics) that you gave yesterday, I suppose?

A. Yes, the same books.

Q. And the Mutual Life's from their own rate book?

A. Yes, from their authorized rates.

Q. Does the Mutual Life Insurance Company loan money?

A. Yes, sir, they do.

(Objected to as irrelevant and immaterial.)

(Exception.)

Q. If the Mutual Life Insurance Company loaned me one thousand dollars at ten per cent. per annum for ten years and if the company insured me at the age of 28 under a non-participating endowment policy of a thousand dollars for ten years, what would the two contracts cost me in cash per annum and how much in ten years?

(Objected to as irrelevant and immaterial, the contract between plaintiff and defendant not being in any respect a so-called endowment contract.)

(Exception.)

A. Well, the interest on such a contract as that would of course

be one hundred dollars a year and the premium for such an endowment policy $91.80 a year; the expense, then, for ten years would be $1,918, total.

57 Q. At the end of that period the principal would be paid up would it not, of the loan, and if those payments had been made regularly as per contract there would be nothing further due from the party insured to the company?

(Objection to all this evidence in reference to this matter already inquired about and being on this same line, as irrelevant and immaterial.)
(Exception.)

A. His payments under the insurance policy being completed and the policy paid for it would of course offset the loan and could be used in that way.

Q. So that in ten years for what he had received he would have paid out $1,918 in money at the rate of $191.80 a year?

(Objection.)
(Exception.)

A. Yes, sir.

Q. If, then, a party took a loan of $1,000 from the defendant in this case for ten years, agreeing to pay $180 per annum to the defendant and the defendant agreeing that if he should die at any time within ten years it would cancel the notes and mortgage given as evidence and as collateral to said debt, and that in case of payment of these sums—$180 a year,—as agreed, for the ten years the loan should be cancelled by payment, or a contract of similar effect to that; would not the party contracting with the company for the loan have actually at all times a position equivalent to that that he would have had under the contracts with the Mutual Life Company that you have referred to, and at a less figure than under those contracts with the Mutual Life, it being made, as I have suggested, at ten per cent. per annum for the loan?

(Objected to as irrelevant, immaterial and incompetent; that there is no foundation laid in the pleadings or testimony showing a state of facts similar to those suggested in the hypothetical statements by counsel in his question as a proper basis on which the proposed question could be answered; and for the further reason that it is not shown that the Mutual Life Insurance Company, of which the witness is an agent, issues or makes a contract in any way similar to or resembling the contract set forth in the pleadings in this action, or that they combine two contracts in one or in that

58 there is no specified price for premiums or no specified rate of interest set forth and that the contract is the best evidence of its legal effect.)
(Exception.)

A. I think it would.

Cross-examination.

By Mr. RICHARDS:

Q. Have you seen the contract entered into between the plaintiff and the Missouri, Kansas & Texas Trust Company defendant?

A. I have not.

Q. You say the Mutual Life Insurance Company makes loans?

A. Yes, sir.

Q. When they do, are you familiar with their custom and practice in making loans?

A. No, sir, only in a general way.

Q. Do they make loans when they have no insurance policy issued upon the life of the borrower?

A. I suppose so; in fact I know they do at certain times.

Q. Is it their custom to insist upon policies upon the life of the borrower?

A. I don't think so, no, sir.

Q. Are the two branches entirely separate,—the loan branch and the insurance branch?

A. Yes, sir.

Q. Do you know whether or not it is their custom to combine the two contracts in one?

A. I never saw such a contract.

Q. Did you ever hear of such a contract of theirs?

A. No, sir.

Q. Did you ever hear of such a contract at all?

A. Yes, I have heard of such a contract.

Q. You have heard that there was such a contract in the pending case?

A. Yes, and further than that that such contracts were issued by certain companies. I know that the Missouri, Kansas & Texas Trust Company have done business in that way.

Q. That is the only company that you have knowledge of that has done business in that way?

A. Yes.

Q. Do you know whether or not the Missouri, Kansas & Texas Trust Company in those contracts ever cause the rate of premium to be specified?

A. I do not.

59 Q. Or the rate of interest to be paid?

A. I do not; no, sir.

Q. Is it a fact, Mr. Squier, that the term endowment policy used in the life-insurance business always means that under the terms of the contract the money is paid to the beneficiary where the party insured is still alive?

A Yes, sir, it would be paid to him if he survives the term; in case of his prior death to the beneficiary.

Q. Does the ten-year non-participating term in insurance parlance imply any endowment plan?

(Objected to as immaterial, incompetent and irrelevant.)

(Exception.)

A. No, sir.
Q. How does the endowment rate of premium compare with the rates on the ten-year non-participating term?
A. They are higher.
Q. That is because the contract absolutely calls for the payment of the amount of the policy in a given term of years, is it not?
A. Yes.
Q. Without any uncertainty whatever?
A. No uncertainty.
Q. In case of death it is to be paid and in case of the rolling around of the years it is to be paid?
A. That is true.

W. H. SQUIER.

W. E. COVEY, sworn on behalf of the defendant, on examination testifies as follows:

Direct examination.

By Mr. WHITE:

Q. Mr. Covey, you are the same person, are you not, who took the stand for the plaintiff in this action yesterday and gave testimony at the request of Mr. Richards?
A. I am.
Q. Are you familiar with the rates of premium of any of the leading companies of the United States on what is known as the ten-year non-participating endowment policy?

(Objected to for the reason that it is irrelevant and immaterial.)
(Exception.)

A. In a general way.
Q. You have said that you are connected with the Equitable Life Assurance Society of the United States; do you know their
60 rate of premium per thousand for insurance at the age of 28 on the non-participating endowment plan?

(Objected to as incompetent, irrelevant and immaterial.)
(Exception.)

A. I don't, to give the exact figures.
Q. Well, you know approximately?
A. Yes, sir.
Q. It is more, is it not, as the age increases?
A. Yes, sir.
Q. Will you give the rate for the age of 28 for such a policy?

(It is understood that all evidence of the witness on the subject of the rate on any such plan called in insurance the endowment plan, or with reference to the terms of any such policy or contract is objected to on the part of the plaintiff as being irrelevant and immaterial under the issues.)
(Exception.)

A. For the age of 28 the rate of a ten-year non-participating endowment would be about $91.26.

Q. And at 31 years of age would be what?
A. $91.66.
Q. Are these within a dollar or two of about the rate of other companies for the same ages and engaged in the same business?
A. I think they are.
Q. Your knowledge of this plan and the terms is derived, I presume, from the same source that you testified your knowledge of the non-participating life-term policy was derived, yesterday?
A. Yes, sir.
Q. The publication of these rates is equally reliable, is it not, with the publication of the rates that you testified to yesterday?
A. Yes, sir.
Q Are the rates that you have sworn to about the same rates that were established in 1889 and 1890?
A. They are, or were in force in 1889 and 1890—not established then.
Q. Does the Equitable Life Assurance Society loan money?

(Objected to as irrelevant and immaterial.)
(Exception.)

A. They do under certain conditions.
Q. If the Equitable Life Assurance Society loaned me $1,000 at ten per cent. per annum for ten years and if the society in-
61 sured me at the age of 28 under a non-participating endowment policy of a thousand dollars for ten years, what would the two contracts cost me in cash per annum and how much in ten years?

(Objected to as irrelevant and immaterial under the issues and for the further reason that there is no similarity existing as between an endowment contract and the contract between the plaintiff and defendant in this case.)
(Exception.)

A. About $191 a year—a total of $1,910, not including interest.
Q. At the end of that period the principal would be paid up would it not, of the loan, and if these payments had been made regularly as per contract there would be nothing further due from the party insured to the company?

(Same objection.)
(Exception.)

A. No, that wouldn't be so; he simply would have paid his interest on his loan. He wouldn't have paid his loan.
Q. If he used the amount received to pay the loan, that would be the case, would it not?
A. Yes, sir.

(Same objection.)
(Exception.)

Q. So that in ten years he would have paid out $1,910 in money at the rate of $191 a year?
A. Yes, sir.

(Same objection.)
(Exception.)

Q. If, then, a party took a loan of $1,000 from the defendant in this case for ten years, agreeing to pay $180 per annum to the defendant and the defendant agreeing that if he should die at any time within ten years it would cancel the notes and mortgage given as evidence and as collateral to said debt, and that in case of payment of these sums—$180 a year—as agreed, for the ten years the loan should be cancelled by payment, or a contract of similar effect to that; would not the party contracting with the company for the loan have actually at all times a position equivalent to that that he would have had under the contracts with the Equitable
62 Life Assurance Society that you have referred to, and at a less figure than under those contracts with the Equitable Life, it being made, as I have suggested, at ten per cent. per annum for the loan?

(Objected to as irrelevant, immaterial and incompetent; that there is no foundation laid in the pleadings or testimony showing a state of facts similar to those suggested in the hypothetical statements by counsel in his question as a proper basis on which the proposed question could be answered; and for the further reason that it is not shown that the Equitable Life Assurance Society, of which the witness is an agent, issues or makes a contract in any way similar to or resembling the contract set forth in the pleadings in this action, or that they combine two contracts in one or in that there is no specified price for premiums or no specified rate of interest set forth and that the contract is the best evidence of its legal effect.)
(Exception.)

A. Practically so.

Cross-examined.

By Mr. RICHARDS:

Q. What do you mean in insurance language by an endowment policy, Mr. Covey?

A. A policy which contracts to pay the insured or his beneficiary the face of the policy at maturity or at the previous death of the insured.

Q. Then there is no uncertainty in such a policy as that as to the obligation of the company to pay over the full amount of the policy?

A. There is not.

Q. How does that differ from what you have described as the ten-year non-participating term plan?

A. It differs in all its main features.

Q. On the ten-year-term plan if the party lives out the term of the policy the company pays out nothing?

A. They do not.

Q. I understand you to say that the difference at the age of 28

between the two plans in the premium on $1,000 is the difference between $13.76 and $91.76 on the endowment plan?

A. Yes, sir.

Q. Have you seen the contract of the plaintiff with the defendant, The Missouri, Kansas & Texas Trust Company?

A. I have not.

Q. Do you know, Mr. Covey, of any life insurance com-
63 panies which also combine a loaning system whereby they incorporate their contract of the loan and the contract of the life insurance in one policy or contract?

A. I do not.

Q. Have you ever known of such a company?

A. I have not.

Q. Where the Equitable make those loans of money they are independent of the life insurance policy?

A. Entirely.

Q. And is that the case with all other life insurance companies of your knowledge that do a loaning business with their funds?

A. It is.

WM. E. COVEY.

WENDELL P. MOSHER, sworn on behalf of the defendant, on examination testifies as follows:

Direct examination.

By Mr. WHITE:

Q. What is your business and residence?

A. Business is insurance; residence is Duluth.

Q. What is your age?

A. Age, 35.

Q. The insurance includes life insurance?

A. All kinds of insurance.

Q. How long have you been engaged in life insurance?

A. 17 years.

Q. What life insurance companies do you represent at the present time?

A. The Travelers' of Hartford; never represented any other.

Q. How long have you reprsented them?

A. 17 years.

Q. How long in Duluth?

A. Six years.

Q. As their agent?

A. Yes, sir.

Q. In 1889 and 1890 did you represent the defendant in this case,—The Missouri, Kansas & Texas Trust Company,—and in what capacity?

A. I represented them as their agent here for making loans,—forwarding applications to them.

Q. Did you make the loan to the plaintiff in this case?

A. I did.

Q. You are acquainted then, probably, are you not, with the loan contract?

64 A. Why, I was acquainted with it. I haven't had anything to do with it since that time. I probably will be a little rusty on it.

Q. In general you know the provisions of the contracts?

A. Yes, sir.

Q. The amount of the loan in this case was what?

A. $2,000.

Q. The amount received by the plaintiff?

A. Well, as I remember it, it was $2,000. He paid his first payment when he was given the money.

Q. How much was his first payment?

A. $30.

Q. Does the Travelers' Insurance Company do a loaning business?

(Objected to as irrelevant and immaterial.)
(Exception.)

A. They do, yes, sir.

Q. It also does a life-insurance business?

A. Yes, sir.

Q. In the latter business does it issue what are known as non-participating endowment policies?

(Objected to as irrelevant and immaterial.)
(Exception.)

A. Yes, sir.

Q. Do you know the rates that are charged by it therefor?

A. I do.

(Same objection.)
(Exception.)

Q. Are these substantially the same rates that have been charged by it for the last ten years?

A. Yes, sir.

(It is understood and agreed that the objection of the plaintiff's counsel shall extend to all testimony adduced from this witness having a reference to or based upon a comparison of the endowment plan of insurance with that existing in the contract in this case as being irrelevant and immaterial.)
(Exception.)

Q. The amount charged in each case for an endowment policy is greater as the age increases, is it not?

A. Yes.

65 Q. Will you give me the amount of charge per thousand for such a policy for a term of ten years at the age of 28?

A. $92.45 per thousand per year for ten years.

Q. Do you know about how that compares with the rates charged by other companies for the same class of insurance?

A. Being non-participating it is from 20 per cent. to 30 per cent. lower than companies selling participating insurance.

Q. But for non-participating it is substantially the same?

A. Substantially the same. Practically all companies are selling participating insurance.

Q. If the Travelers' Insurance Company loaned to an applicant $1,000, at ten per cent. per annum interest for ten years and at the same time issued to the same person a non-participating endowment policy of insurance for the same period and amount, what would the cost per annum therefor be and what the total amount?

(Objected to as irrelevant and immaterial under the issues, and for the further reason that there is no similarity existing as between an endowment contract and the contract between the plaintiff and defendant in this case.)

(Exception.)

A. At age 28 it would be $192.45 per year for ten years—$1,924.50 total. That is, of course, to say nothing about the commission, as agent for working the loan, of three per cent.

Q. Did the plaintiff in this case pay you any commission for obtaining the loan?

A. No, sir; the Missouri, Kansas & Texas Trust Company paid me the commission.

Q. As a matter of fact, taking those contracts suggested with the Travelers' Insurance Company—the endowment insurance and the ten per cent. loan—and comparing the same as far as the borrower is concerned with the contract between the plaintiff and the defendant in the case at bar, in which plaintiff pays defendant $180 per year per $1,000, for the benefits received, are not the positions of the borrower in the two cases at all times during the life of the loan, providing the payments are made as per contract, exactly identical and at a less expense in the case of the contract between the plaintiff and the defendant than in the other case?

(Objected to as incompetent, irrelevant and immaterial, and further, the witness has not shown himself competent to speak
66 from actual knowledge as to the particular contract entered into in the case between the plaintiff and the defendant, and the exact terms thereof not indicated in the question asked. To the objection of counsel for the plaintiff to the previous question is added the further objection that the question assumes that the contract between the plaintiff and the defendant is on the endowment plan, which is not the case, and involves the opinion of the witness as to the legal effect of a written contract with which he does not show himself to be familiar.)

(Exception.)

A. I think they are identical. I made use of the statement at the time of making loans that it was in fact the giving of the avails of a policy immediately on the contract being closed instead of at the end of the ten-year period.

Cross-examination.

By Mr. RICHARDS:

Q. Do you know what is meant in insurance language by the expression non-participating ten-year-term plan, Mr. Mosher?

A. Yes, sir.

(Objected to as not proper cross-examination.)
(Exception.)

Q. At the age of 28 what is the rate of premium of your company on that plan—non-participating ten-year term?

(Objected to as incompetent, irrelevant and immaterial, and not proper cross-examination.)
(Exception.)

A. We have no such plan.

Q. What is the meaning in insurance language of the expression endowment plan?

A. That a certain sum of money will be turned over to the policy-holder at a stated time if in the meantime he has made the certain payments according to the manner of the company.

Q. In all endowment policies the obligation of the company to pay the face of the policy is fixed and certain under all conditions?

A. At the end of the period.

Q. If the insured dies his estate gets the money and if he lives he gets it?

A. Yes, sir.

67 Q. Do you know what the ten-year non-participating term plan is?

A. Yes, sir.

Q. On that plan if the party lives there is no money paid by the company to him or to the beneficiary named in the policy?

A. No, sir.

(Objected to as incompetent, irrelevant and immaterial, and not proper cross-examination.)
(Exception.)

Q. In that case the premium charged by the company is small in proportion to the rate of premium charged on the endowment plan, is it not?

(Same objection.)
(Exception.)

A. Yes, sir.

Q. Do you know what the rates of premium on the ten-year non-participating plan are at the age of 28?

A. I do not.

Q. Is it true that there is a very marked and extraordinary difference between the two plans of insurance?

A. There is a marked difference; not extraordinary, considering what each plan pretends to do.

Q. I will ask you to explain the two plans?

(Objected to as incompetent, irrelevant and immaterial, and not proper cross-examination.)
(Exception.)

A. The endowment plan agrees to pay to a man a certain sum at the end of a term of years or in case of his prior death. The other plan simply agrees to cover his beneficiary during that ten years only.

Q. No money whatever is paid if he lives out the term?

A. No.

Q. Do you say that you are familiar with the terms of the contract entered into between the plaintiff and the defendant in this case?

A. Yes, sir.

Q. I will ask you if in your opinion as a life-insurance agent that is an endowment plan insurance policy?

(Objected to as incompetent and immaterial.)
(Exception.)

A. The contract says nothing about endowment insurance. It doesn't pretend to be such.

68 Q. Do you mean that it doesn't pretend to be an insurance policy, or doesn't pretend to be an endowment contract?

A. The word insurance is not mentioned in the contract, so you are asking me if a cat is a dog.

Q. Do you mean to say, then, that this plan of contract is not an endowment plan insurance policy?

A. It is not an insurance policy.

(Plaintiff moves to strike out the last answer as not responsive.)
(Exception.)

Q. Consequently cannot be an endowment plan insurance policy?

A. No. In effect it is endowment. The result to the party borrowing is the same as under an endowment policy.

(Plaintiff moves to strike out last answer as not responsive to the question.)
(Exception.)

WENDELL P. MOSHER.

Continued until ten o'clock a. m., September 19th, 1895.

United States Circuit Court, Fifth Division, District of Minnesota.

TH. M. KRUMSEIG & LOUISE KRUMSEIG, Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY *et al.*, Defendants.

In the above-entitled matter it is hereby stipulated that the testimony of the complainant herein be taken before Clarence R. Smith at his office in the city of Duluth, Minnesota, on the 16th day of September, 1895 to be commenced at 10 o'clock a. m. and to con-

tinue, by adjournments from day to day if necessary until closed; the said Clarence R. Smith to be examiner of the court the same as if duly named as such by the clerk thereof; and it is agreed that defendant shall at said time produce to be used as evidence for the complainant- if desired, and subject to all legal objections thereto on part of defendant, the written application for a loan made on the part of the plaintiffs or either of them to defendant in pursuance to which the loan, secured by the mortgage in the complaint described, was made by defendant; and also a duly certified copy of the articles of incorporation of the said defendant M. K. & T. Tr. Co., as existing when the contract described in the pleadings herein was made; and it is further stipulated said copies shall be treated as originals for said purposes of evidence; and it is agreed that
69 the evidence desired by defendants in said action shall be taken after completion of plaintiffs' evidence in time for a hearing herein before the court at the October term thereof in the year 1895, if plaintiff- shall have finished on Sept. 19th, 1895, and that said cause shall be then tried.

Dated, Sept. 6th, 1895.

J. B. RICHARDS,
Plaintiff's Attorney.
WM. C. WHITE,
Defendant's Attorney.

The United States of America for the Fifth Division, District of Minnesota.

I, Clarence R. Smith, examiner of the court, hereby certify that the above witnesses, Theodore M. Krumseig, W. H. Squier, William E. Covey and W. P. Mosher, were by plaintiffs' counsel by consent of defendant's counsel duly sworn to testify the truth, the whole truth and nothing but the truth; that their depositions were reduced to shorthand writing by me in the presence of the said witnesses respectively, and thereafter to longhand by agreement of said counsel, and when completed read over by said witnesses respectively, and subscribed by them in my presence and in the presence of such of the parties and counsel as attended; that said depositions were taken pursuant to the annexed stipulation at my office at Duluth, beginning on the 16th day of September, 1895, and continuing from day to day as set forth; that the parties were represented at the taking of said deposition by their respective counsel as set forth; that the several exhibits recited were offered in evidence and marked as specially noted in the foregoing depositions; and that I am not counsel or relative of either party, or otherwise interested in the event of this suit.

In testimony whereof I have hereunto set my hand this 4th day of October, 1895.

CLARENCE R. SMITH,
Examiner of the Court.

United States Circuit Court, Fifth Division, District of Minnesota.

THEODORE M. KRUMSEIG & LOUISE KRUMSEIG, Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY, Defendant.

It is hereby stipulated, by and between the parties plain-
70 tiff and defendant in the above-entitled action that the deposition and testimony of John B. Lunger and others residing at Newark in the State of New Jersey, witnesses on behalf of said defendant shall be taken by and before any notary public residing at Newark, New Jersey, whose official character as such notary public shall be sufficiently proven by his official seal and an impression thereof affixed to or stamped upon his return hereto; and such notary public is hereby agreed upon and appointed to take the deposition- of said witnesses, at 9 o'clock a. m., on Monday, September 16th, 1895, at the office of Prudential Insurance Co. of North America, in Newark, New Jersey; and said parties hereby waive any and all objections to said notary public, and waive the issuing of any commission from said court herein, and hereby agree that said deposition- of said witnesses shall have the same force and effect as if taken upon commission duly issued herein; and said parties waive any and all notices and prerequisite forms required by law or the rules of court for the taking of depositions; but said parties reserve to themselves the right to object to the competency and admissibility of said testimony interrogatories and cross-interrogatories, and to any of the same, and to any of the answers thereto respectively, in like manner and upon the same grounds as if said witnesses were present and orally examined in open court upon the trial of this cause which is at issue and in said court depending.

And it is further stipulated that said depositions may be adjourned from day to day until the same are fully completed. And it is agreed that the deposition of the Prudential Life Insurance Company taken July 29th, 1895, at Newark, N. J. at the instance of the plaintiff- shall also be decreed to have been taken under the above-mentioned terms, the taking of same before filing of replication being waived.

Dated, Sept. 5th, 1895.

J. B. RICHARDS,
Attorney for Plaintiff.
WM. C. WHITE,
Attorney for Defendant.

United States Circuit Court, Fifth Division, District of Minnesota.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs,
vs.
MISSOURI, KANSAS AND TEXAS TRUST COMPANY, Defendant.

Deposition taken in the above-stated cause pursuant to stipulation dated the fifth day of September, 1895, signed by J. B.
71 Richards, attorney for plaintiff-, and William C. White, attorney for defendant, before J. R. Salmon, a notary public, residing at Newark, in the State of New Jersey, at the office of the Prudential Insurance Company of North America, in Newark, New Jersey, commencing on the 16th day of September, 1895, at 9.30 o'clock a. m., in the presence of Thomas N. McCarter, Jr., counsel for defendant.

JOHN B. LUNGER, being by me first duly sworn on his oath according to law, to tell the truth, the whole truth, and nothing but the truth, relative to the cause specified in said stipulation, did depose and say as follows:

Direct examination.

By Mr. MCCARTER:

Q. State your name, age, residence and occupation?
A. John B. Lunger; age, 31 years; residence, Summit, New Jersey; occupation, manager of the ordinary branch and actuary of the Prudential Insurance Company.

The further taking of this deposition was adjourned by me until Tuesday, September 17th, at 9.30 o'clock a. m., to be continued at the same place.

____ ____,
Notary Public of New Jersey.

SEPTEMBER 17TH, 1895.

Continuation of examination, pursuant to adjournment, at the place and in the presence of the parties as before.

JOHN B. LUNGER resumed.

Q. How many years' experience have you had as actuary of the Prudential Insurance Company?
A. About fourteen years.
Q. Are you a member of the American Society of Actuaries?
A. I am.
Q. By reason of the nature of your duties, are you familiar with the laws of interest and the various (principals) which enter into the construction of life-insurance premiums?
A. Yes, sir; I am.
Q. Are you familiar with the department of business carried on by the Missouri, Kansas and Texas Trust Company, which grants a loan to the borrower for a period of ten years to be paid in monthly

installments, or to be cancelled at his death during the period for which it is rendered?

A. I am familiar with the company's plan, and the contract
72 between the company and the borrower, but not with the manner in which the details of the transaction are handled in the office of the M. K. & T. Trust Company.

Q. You are, however, familiar with the general principles of this line of business?

A. I am.

Q. I show you one of the usual forms of contract entered into by this company, and ask you if you have examined either it or one like it?

A. I have examined this particular contract.

Q. Have you also made any examination as to the rates charged by the M. K. & T. for entering into such contract with the borrower?

A. I have.

Q. Will you now state the nature of this contract?

A. To my mind, it transfers certain property to the trust company as security for a loan of $2,000 to the borrower, such loan, with charges, to be repaid to the trust company in monthly installments of thirty dollars each, extending over a period of ten years; there is a special proviso on the part of the trust company that in case of the death of the borrower prior to the repayment of the loan all unpaid installments shall be cancelled and the obligations declared void. In brief, the contract is a combination of a mortgage loan, payable in installments, and a life-insurance policy.

Q. Do you know of any other companies making contracts of a similar nature?

A. Yes.

Q. Have you had any personal experience in computing rates charged by any of these other companies doing this same business?

A. In the case of one company; yes.

Q. What company is that?

A. The South Jersey Finance Company of Camden, New Jersey.

Q. Did you compute the rates under which that company operates?

A. I did.

Q. Are you familiar with the rates charged by a company in Pennsylvania doing the same business, called the United Security Life Insurance and Trust Company of Pennsylvania?

A. I am.

Q. At the time you became familiar with the rates of the United Security Life Insurance and Trust Company, and made up the rates of the South Jersey Finance Company, were you familiar with the rates of the M. K. & T. Company?

A. Only in a general way; I did not know the exact charges.

73 Q. Have you recently made any examination of the rates charged for such a contract by the M., K. & T. Company?

A. I have carefully analyzed the rate.

Q. So that you are now familiar with the rates charged by the M. K. & T. Company?

A. I am.

Q. As well as the rates charged by the other leading companies in the country doing the same business of which you have knowledge?

A. Yes, sir.

Q. Are you familiar with the legal rate of interest allowed in the States of New Jersey, Pennsylvania and Minnesota?

A. I am.

Q. What are they?

A. Six per cent. in New Jersey and Pennsylvania, ten per cent. in Minnesota.

Q. Bearing in mind then, the difference in the rate of interest allowed in said States, will you state whether the charge made by the M. K. — T. Trust Company for its contracts within the State of Minnesota are relatively greater than the rates charged for similar contracts by the South Jersey Finance Company of Camden, and the United Security Life Insurance and Trust Company, within the States of New Jersey and Pennsylvania?

Objected to by pl'ff as irrelevant and immaterial, and assumes facts not proven.

A. They are not. The advantage is in favor of the M. K. & T. Trust Company.

Q. Now, Mr. Lunger, the company with which you are connected has an ordinary branch, has it not?

A. Yes, sir.

Q. And will issue life and endowment policies in such branch?

A. It will.

Q. Has your company also a bond and mortgage department for purposes of investment?

A. It has.

Q. Would it be possible for a person to borrow on proper security $1,000 from your company through its bond and mortgage department, and at the same time take out a ten-year endowment policy in the ordinary branch, with the idea of using the proceeds of the ten-year endowment policy to pay off the load at the end of ten years?

A. It would, if the person was in good health.

74 Q. What is the very lowest charge in your ordinary branch for a ten-year endowment policy, age 28 years, for $2,000?

A. At age of 28 our rate for a $2,000 policy without profits would be $185.62 annually, or $49.20 quarterly.

Q. You mean by without profits a policy which will pay $1,000 at the end of ten years, and no more?

A. I do.

Q. If these installments were payable monthly, would or would not the rate be increased over these quarterly payments?

A. They would be increased.

Q. Now in case a party should borrow $2,000 from your company

through its bond and mortgage department, and at the same time take out a ten-year endowment policy through your ordinary branch, with a quarterly premium of $49.20, what would such party pay your company per annum, assuming that the mortgage is subject to 10 per cent. interest?

(Objected to as irrelevant and immaterial, contract in question not being an endowment contract.)

A. He would pay us $200 per annum interest through our bond and mortgage department, and $196.80 in premiums through our ordinary branch, making a total of $396.80.

Q. What are the annual rates of the M. K. & T. for a loan of $2,000 for ten years, payable in monthly installments?

A. The annual installments amount to $360 per year at all ages between twenty-five and forty-five.

Q. Has your company any contract with the M. K. & T. Trust Company to carry the insurance part of the M. K. & T. Trust Company's contract with its borrowers?

A. It has.

Q. Are you making further similar contracts?

A. We have made several of such contracts, but have now discontinued entering into such arrangements.

Q. Why?

A. Because we have not received a sufficient line of business through such contracts to justify us in issuing the policies at the rate which we charge.

Q. Was one of the considerations for your company entering into this contract the prospect of a large volume of business thereunder?

A. It was.

Q. Is the rate which you are charging the M. K. & T. an average rate or an unusually low one?

A. It is a low rate.

75 Q. Could an individual obtain a policy at the same rate from your company?

A. No.

Q. Do I understand you to say that it is not the intention of the company to make any more similar contracts to this one at the same rate?

A. We have discontinued making such contracts, and are not likely to change our decision, although we reserve the right to do so.

Q. Do you collect the premiums on the policies which you issued to the M. K. & T., and do you assume any risk in connection therewith?

A. We do not.

Q. Is that one reason why you quote them the low rate?

A. It is.

Q. Were you influenced to quote a low rate by the fact that you expected to secure through the trust company an unusually desirable class of policy-holders?

A. We were.

Testimony closed. JOHN B. LUNGER.

STATE OF NEW JERSEY, }
County of Essex, } ss:

Be it known that I took the annexed deposition of John B. Lunger, pursuant to the annexed stipulation; that I was then and there a notary public in and for said county and State; that I exercised the power of that office in taking such deposition; that by virtue thereof I was then and there authorized to administer an oath; that the witness, before testifying, was duly sworn to testify the whole truth and nothing but the truth relative to the cause specified in the annexed stipulation; that the testimony of the witness was correctly read over to him by me before he signed the same; that the examination was conducted on behalf of the defendant by Thomas N. McCarter, Jr., no one appearing for the plaintiff.

Witness my hand and seal this 17th day of September, 1895.

[NOTARIAL SEAL.] J. R. SALMON,
Notary Public, of New Jersey.

United States Circuit Court, Fifth Division, District of Minnesota.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs, }
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY, Defendant. }

It is hereby stipulated by and between the parties plaintiff
76 and defendant in the above-entitled action that the deposition- and testimony of Francis H. Hemperly and William S. Taylor, and others, residing at Philadelphia, in the State of Pennsylvania, witnesses on behalf of said defendant, shall be taken by and before any notary public residing at Philadelphia, Pennsylvania, whose official character as such notary public shall be sufficiently proven by his official seal and an impression thereof affixed to or stamped upon his return hereto; and such notary public is hereby agreed upon and appointed to take the deposition of said witnesses, at 9 o'clock a. m., on Monday, September 16th, 1895, at the office of Missouri, Kansas and Texas Trust Co., at 400 Chestnut street, Philadelphia, Pennsylvania; and said parties hereby waive any and all objections to said notary public, and waive the issuing of any commission from said court herein, and hereby agree that said deposition- of said witnesses shall have the same force and effect as if taken upon commission duly issued herein; and said parties waive any and all notices and prerequisite forms required by law or the rules of court for the taking of depositions; but said parties reserve to themselves the right to object to the competency and admissibility of said testimony, interrogatories and cross-interrogatories, and to any of the same, and to any of the answers thereto respectively, in like manner and upon the same grounds as if said witnesses were present and orally examined in open court upon the trial of this cause which is at issue and in said court depending.

And it is further stipulated that said depositions may be ad-

journed from day to day until the same are fully completed. And it is agreed that the deposition of the Prudential Life Insurance Company taken July 29th, 1895 at Newark, N. J. at the instance of the plaintiff shall also be decreed to have been taken under the above-mentioned terms, the taking of same before filing of replication being waived.

Dated Sept. 5th, 1895.

J. B. RICHARDS,
Attorney for Plaintiff.
WM. C. WHITE,
Attorney for Defendant.

U. S. C. C., (*Di*fth) Division, Dis. of Minn.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs,
vs.
THE MISSOURI, KANSAS & TEXAS TRUST CO., Defendants.

77 Deposition of Francis H. Hemperly, residing at Philadelphia, in the State of Pennsylvania, a witness called on behalf of the said defendant in accordance with the stipulation duly filed in said cause.

FRANCIS H. HEMPERLY, being duly sworn according to law, deposes and says:

By Mr. LEX:

Q. Please give me your name, age, residence and occupation?

A. My name is Francis H. Hemperly, I am fifty-two years of age, residence Philadelphia, my occupation is that of actuary for the United Security, Life Insurance & Trust Company.

Q. What experience have you had as actuary?

A. I have held that position since the organization of the company, some eight years.

Q. Are you associated with any organization of actuaries and have you had any experience as an expert in matters in which an actuary was necessary?

A. I am a member of the Actuarial Society of America and have had the usual experience of an actuary in connection with the business of the company.

Q. Have you ever been called upon to testify as such in suits in this State, New Jersey, the District of Columbia or elsewhere?

A. I have; yes, sir.

Q. Have you or have you not any knowledge as an actuary of the plan of the Missouri, Kansas & Texas Trust Company under which the loan in this case was made to Theodore M. Krumseig and wife?

A. I have.

Q. In connection with that have you examined the form of note and the mortgage, which two papers contain the contract made between the plaintiffs and the Missouri, Kansas & Texas Trust Company?

A. Yes, sir; I have.

Q. I would like you, in your own way, as an expert actuary to explain the manner in which the plaintiffs obtained their money, the character of the contract so far as it relates to the installments which they were to pay, and the time during which the contract was to run, and then I would like you to dissect the rate which was charged so as to be able to state whether or not any part of the contract in any of its aspects whatever is tainted with usury?

Objected to as incompetent, calling for witness' construction of written contract, and for his opinion as to whether it is usurious, and moved to strike out answer.

78 A. You ask me to analyze the installments of premiums charged by the Missouri, Kansas & Texas Trust Company upon moneys advanced by them with a life-insurance clause or guarantee of cancellation of the debt remaining unpaid in case of death, with a view to ascertaining whether these charges can be properly considered as exorbitant, taking into consideration the laws of Minnesota, allowing a charge of ten per cent. interest on the money advanced.

On the ten-year plan the rates of the company as given me upon an advance of $2,000 are $360 a year, payable monthly, at $30 per month, making a total of $3,600 for the entire time which the insured would pay the company should he live to the end of the term, or $1,600 over and above the amount received by him in advance. In order to simplify calculations, we will reduce these figures to a basis of $1,000, making the installment $180 a year, or $15 a month.

First I would call attention to the fact that had this borrower taken out a policy of insurance upon an endowment plan, which would give his heirs $1,000 in case of death inside of ten years, or which would pay him $1,000 at the end of ten years if he survived and kept up the premiums, he would have had to pay for the same at the age of twenty-eight years, paying quarterly, the sum of $107.80 a year, according to the tables of a first-class company lying before me. I refer to the Penn Mutual Life Insurance Company. This would leave the sum of $72.20 with which to procure the money in advance elsewhere if he desired to do so, or a fraction over seven per cent., but as these are participating insurance rates, upon which there would probably be a dividend, let us see what regular stock rates with no dividends would cost. According to the tables of another first-class company, the National Life Insurance Company of Vermont, and I take the rates of this company because they are the lowest stock rates with which I am familiar, the cost would be, payable quarterly, $91.76 a year. This would leave $88.24, or a trifle over eight and eight-tenths per cent. as interest. I think the Missouri, Kansas & Texas Trust Company is entitled to charge these regular endowment insurance rates in addition to the legal rate of interest for the advance of the money, because the company has to take greater risks than ordinary insurance companies in that the money is paid in advance while the insured has greater security than is enjoyed by the ordinary insured for the same

reason, as no possible financial misfortune which may happen to the company can affect him or deprive him of the privileges of his contract. I consider that the money advanced to the borrower is in the nature of a permanent investment until the end of the contract, and that the life-insurance risk is carried upon the whole amount so invested while the install-
79 ments or premiums as they are paid in provide an accumulating reserve or sinking fund which is augmented by an increased amount each year until the expiration of the term, when it must equal the original amount advanced. This reserve is an offset to the amount at risk, and in case the insured desires to terminate his contract, it furnishes a basis for calculation to determine how much he must pay back to the company on account of the money advanced. Ordinarily, life insurance companies allow the insured the legal insurance reserve, which has been calculated upon the actuary's experience of mortality at a four per cent. or four and a half per cent. rate of interest. When forfeiture of the policy is made the reserve is reduced by (*form*) fifteen to thirty per cent. as a surrender charge to provide for the injury done the company by reason of the withdrawal of the insured, who thereby weakens the company not only financially, but also physically, in that he reduces the standard of average health by withdrawing.

Q. I would now like you to apply the principles which you have just stated and the formula which you have just given to the present case, the facts of which I understand to be as follows: That Theodore M. Krumseig being of the age of twenty-eight years borrowed from the Missouri, Kansas & Texas Trust Company $2,000, which were paid to him for ten years, to be repaid in monthly installments, for which they took his notes and mortgage to secure the same, and under the usual form of contract agreed that in case the plaintiff should die at any time within ten years that the notes remaining unpaid should be cancelled and the mortgage satisfied, or if he should pay all the notes according to the terms of the contract, when that had been done the mortgage should be satisfied. Please also bear in mind that, as I understand it, under the law of Minnesota a lender of money is entitled to charge as interest ten per cent. per annum, but if more than that is charged the whole of the principal and interest is forfeited. I would like to know first whether the character of the charge which is made by the defendant company for the cancellation of the debt in the case of Krumseig's death is fair and reasonable. Then I would like you to explain the contract and compare the plan under which the contract was made with Krumseig with the plan of any other company which you know of that makes similar loans?

Question objected to as incompetent, calling for witness' construction and opinion as to the legal effect of the written contract.

A. In the case of the plaintiff referred to, Krumseig having received $2,000 in advance under this plan, with the agreement on the part of the defendant company that in case he should die
80 during the term, not in default, they would cancel all their claims upon him, the application of the principles which I

have tried to state, would show very clearly that upon the payment of the premium installments agreed upon, viz., $360 per year, or $30 per month, he would be entitled to the credit at the end of the several years of the cumulating legal insurance reserve, and that this reserve at the end of ten years, with the conditions of the contract complied with, would amount to $2,000, which would make good to the company the amount of their claim against him by reason of the $2,000 advanced. It is fair that the defendant company should be entitled in making up an analysis of the installments to the credit of the ordinary endowment insurance premium, which, in the case of Mr. Krumseig, would be, with a stock rate and no dividends, as set forth in the tables of the National Life of Vermont, which is a first-class company with a very low rate, $183.52 per year, if paid quarterly. This company has no monthly rates, which would probably increase the charge. The defendant company, therefore, being entitled to the sum of $183.52 with which to cover that which is ordinarily understood by the life-insurance risk, and in addition thereto the cumulation of a sum to be paid at the end of the term is also entitled to the legal rate of interest for the use of its money, which is advanced at the beginning of the term, in this case $2,000, the interest on which would be at ten per cent. $200, and which added to the $183.52 would, in my judgment, have kept the company free from the charge of usury had their premium been $383.52, but, in point of fact, the premium being only $360, a simple calculation will show that the company is $23.52 within the limit where they would reach and be subject to a charge of more than the legal rate of interest.

Or, to take it in a slightly different form, the company charging $360 for the aggregate of endowment insurance and interest, and the endowment insurance rate being $183.52, a simple calculation will show that the difference, which is $176.48, being the amount properly chargeable as interest on the $2,000 for one year, would show $88.24 as the rate on $1,000 for one year, or a rate of interest of a trifle under nine per cent., viz., eight per cent. and eight twenty-four one-thousandths.

Motion by plaintiffs to strike out answer as incompetent, irrelevant and immaterial.

Q. I understand that the calculation which you have just made is based upon the rates of the National Life Insurance Company of Vermont. Am I right?

A. Yes, sir.

Q. If the same calculation were made by you based upon the rates of any of the following-named companies, would or
81 would not the rate of interest paid by the borrower in this case be less than the 8.8 per cent. calculated by you? The names of these companies are, the Provident Life & Trust Company, the Ætna Insurance Company, the Travelers' Insurance Company, the New York Life and the Prudential Insurance Company of America.

Question objected to by plaintiffs as incompetent, calling for a

direct opinion of the witness as to the legal effect of the written contract.

A. To the best of my knowledge and belief, from my general knowledge of the rates charged by the companies referred to, I answer that the rate of interest would be less.

Q. Would it, in any event, reach ten per cent. under the rate of any company that you know of?

A. It would not.

Q. In speaking of the payment of premiums how do you assume that they are paid and what is the custom as to their payment in regard to the calculations?

A. They are always payable in advance.

Q. So that if any borrower should at the time of receiving the amount which he borrowed pay his premium in advance, or, rather, it should be deducted at that time from the amount loaned to him, it would make no difference in any of the calculations which you have made?

A. None whatever. It is assumed that the money is paid to the man and that he pays the company his installments.

Q. In speaking of life insurance and in the calculations which you make this payment is called what?

A. It is called premiums.

Q. And in contracts which are not life-insurance contracts, but those in question in this case, you call the payments what?

A. We call them installments.

Q. Having investigated this case, in your opinion as an expert, can it be held that the charge for the risk of the borrower's death is so (ex*hor*bi'tant) that it could be held as a device to cover usury?

Objected to as incompetent on grounds above stated.

A. I should most positively say no.

Q. Is the charge for the risk which the defendant company has taken in this case unreasonable or unusual?

Objected to as incompetent.

A. It is not.

82 Q. Has there been, in your opinion, any unreasonable or excessive charge under the contract made with the defendant company to cancel the debt in case of death or at the end of the period?

Same objection as above.

A. I think not.

Q. From the testimony which you have given am I right in understanding that the contract between the plaintiffs and defendant company combines the features and purposes of a straight ten-year loan and a ten years' endowment policy?

Objected to as incompetent. (Court alone decides upon nature of the contract.)

A. I have so regarded it, and I am persuaded that the company

is entitled, in making an analysis of its charges, to hold that ground.

Q. Such being the case, will you again state the similarity between the contract in question in this case and make comparison between it and a straight loan and an endowment policy? And after that state which of them is better for the borrower, considering in connection with this of course the peculiar nature of this contract, especially the fact that the borrower gets the money paid to him in advance and that the mortgage is canceled in the event of his death before the expiration of the term of contract.

Objected to as immaterial and irrelevant and incompetent, and especially that it assumes what is not the fact, that the borrower gets the money "paid" to him in advance. It is loaned not paid, and that the contract is one of endowment, which is not the case.

A. The figures which I have given in the former part of my testimony show conclusively that the combined rate of ten per cent. interest on a straight loan and the lowest stock rate of endowment insurance exceed the rate charged by this company, at the age of twenty-eight, by $23.52 on $2,000, or $11.76 per thousand. So that the insuring borrower under the plan of the company makes a saving over the cost if he secured the money as stated, by separating his insurance and taking it elsewhere, of $11.76 per year per $1,000. But I consider this by no means the greatest of the advantages which he secures, because of the fact that he runs no possible risk of the solvency of the insurance company at the end of his term, which experience has taught, even in the case of supposed safe and satisfactory companies, is a risk, and, which, like all other risks, has a money value when insured against, as in this case.

83 Q. What have you to say about the fact that under the contract in the present case in the event of the death of the borrower the mortgage is satisfied upon receiving proofs of death, as compared with the fact that in case of life insurance where premiums are paid monthly, as the installments are in this case, the balance of the monthly premiums due to complete the current year are deducted out of the money due the heirs?

A. It is the usual practice in insurance circles where premiums are paid at intervals of less than a year, in case of death to charge the heirs of the insured for the remaining unpaid portion of the full year premium, but, as I understand, in this case upon the death of the insured not in arrears or default all of the unpaid notes or claims by the company are satisfied.

Q. I understand you then to favor this contract as being better for the borrower than a straight loan or endowment policy either?

A. I certainly do, and, if I might be permitted to suggest that the company is thereby entitled to charge considerably more than the ordinary insurance premiums by reason of the fact that the quality of the protection afforded by it is superior, and not only so, but the company itself, when called upon to collect its risk by reason of default of the insured, has placed itself in a position where it is liable

to be put to additional expense, and where its money cannot be regained as quick as in other cases.

Q. What is the rate of interest in the State of Pennsylvania?

A. Six per cent.

Q. Are you familiar with the plan of any company in this State which makes similar loans to the one under discussion in this case?

A. The company with which I am connected as actuary does a business of a similar character. The name of that company is the United Security Life Insurance & Trust Company of Pennsylvania.

Q. Please briefly compare the plan of that company with the plan under the contract in this case as affecting the borrower in this case?

Objected to by plaintiff as immaterial and irrelevant.

A. The principal difference that strikes me at this moment is that the United Security Company would charge more for a man aged thirty-five years than for one aged twenty-five; in other words, it has a sliding scale of charges according to age from the youngest to the oldest within its limits, whereas, the defendant company
84 in the case appears to have the same charge between the ages of twenty-five and forty-five, but as the calculation which I have made are based upon the younger ages, it would seem that the older ages would be particularly favored in the Missouri, Kansas & Texas Trust Company.

(Motion by plaintiff to strike out the rest of answer as incompetent.)

I might also say that as the legal rate of interest in Pennsylvania is six per cent. and the charges of the United Security Company have been adjusted and decided and held by our courts in cases where the issue has been raised to be free from any taint of usury, that a comparison between the rates of the United Security Company and the Missouri, Kansas & Texas Trust Company shows that while the United Security Company charges upon a risk at that age, twenty-eight, for the advance of $1,000, payable monthly, upon a ten years' term the sum of $157.68 a year, the Missouri, Kansas & Texas Trust Company charges under similar circumstances the sum of $180 a year, or only $22.32 more than is charged by the United Security Company, and as the legal rate of interest in Minnesota is four per cent. greater than in Pennsylvania, it would seem that a difference of $40 would not be excessive. So that as the actual difference is but $22.32, it is fair to assume that the company is well within the limit allowed by law and that there is no usurious charge.

Q. I understand you, therefore, that with the exception of the peculiar facts you have just referred to, the contracts of the Missouri, Kansas & Texas Trust Company of Kansas City, Missouri, and the United Security Life Insurance & Trust Company of Philadelphia are identical?

(Objected to as incompetent, contract itself is best evidence.)

A. Practically they are.

Q. Do you know whether or not the plan of the United Security Life Insurance & Trust Company has come under judicial notice in any suits?

A. It has.

Q. What are they?

(Objected to by plaintiff as calling for incompetent evidence.)

A. I have in mind a case of James Neil, whose mortgage was foreclosed by the United Security Life Insurance & Trust Company in the chancery court of New Jersey. In that case the defendant's answer raised the very same questions that have been raised in this case, and a decision was given in favor of the United Security Life Insurance & Trust Company by the Hon. A. V. Van Fleet,
85 one of the vice-chancellors of the State of New Jersey, his decision having been rendered at Newark on March 15, 1892. Subsequently he made a decree of foreclosure in accordance with his views as expressed. He flatly decided that there was no usurious feature of the contract. I have before me a transcript of the shorthand notes of the testimony and charge, which are at your disposal at any time.

There was also a case tried and decided in the District of Columbia somewhat similar to the present case, the difference being that in that the contract had no feature whereby the mortgage was to be satisfied upon the death of the borrower. The question of usury, however, arose and I gave my testimony as an expert in that case before Mr. Justice Bingham. That case was tried in the supreme court of the District of Columbia and was between John Waggaman, plaintiff, and The United Security Life Insurance and Trust Company of Pennsylvania, defendant. Mr. Justice Bingham rendered a written opinion on January 4, 1894. I have a copy of that before me and it is at your service at any time. Judge Bingham also decided that there was no usurious feature to the contract.

(Motion to strike out answer as incompetent.)

Q. As matter of interest, and it might have a bearing upon what you have just stated, are you able to tell me what the Revised Statute of the District of Columbia provides in reference to usurious contracts?

A. Yes, sir. Paragraph 714 provides that in all contracts made it shall be lawful for the parties to stipulate or agree in writing that the rate of ten per centum per annum, or any less sum of interest, shall be taken and paid upon every one hundred dollars of money loaned or in any manner due or owing from any person or corporation in the District?

Q. Mr. Hemperly, if any other facts occur to you tending to show the fairness and advantages of this contract to the borrower, please state them in your own way.

A. I desire to add that while I am firmly of the opinion that the defendant company is entitled to a credit of endowment insurance rates with interest in making up its analysis of its installments, that

if, for any reason, instead of allowing the company the credit of endowment insurance rates with which to cumulate and increase a reserve or sinking fund to make good the amount advanced, it should be held that all the money paid on account of installments in excess of legal interest (abd) life insurance should be credited directly to the borrower on account of repayment of moneys advanced, I am still of the opinion that the facts previously
86 stated (*to*) me, viz., the superior quality of the insurance furnished, being paid in advance, and the risk which the company takes of receiving its money back from the borrower, and also the additional risk which it assumes of receiving its money from reinsurance of risks would reasonably justify a term insurance rate of more than is accounted for by the excess of installments over and above the legal rate of interest and the amount credited on account of principal. So that, taking this view of it, there could not be possibly any usurious feature in the contract.

(Motion by plaintiff to strike out answer as incompetent, also as irrelevant and immaterial.)

Q. Has the State of Pennsylvania any insurance department as such?

A. It has.

Q. Who is its commissioner?

A. James H. Lambert.

Q. Has the United Security Life Insurance & Trust Company ever been treated by that department as a life insurance company as such?

(Objected to as irrelevant and immaterial.)

A. It has not.

Q. Or has it ever been obliged to make and return as such under its plan of loaning money?

(Same objections.)

A. It has not. It has been specially exempted, after thorough examination, by the department, on the ground that it is not, and that the money having been paid by the company in advance, the law did not contemplate the necessity for any further protection by it of the insured, and that it is not, therefore, life insurance as such, but a great deal better.

FRANCIS H. HEMPERLY.

Subscribed and sworn to before me September 18, 1895.

[NOTARIAL SEAL.] CHARLES E. LEX,
Notary Public.

Certificate.

STATE OF PENNSYLVANIA, } ss:
County of Philadelphia, }

Be it known that I took the annexed deposition of Francis H. Hemperly, pursuant to the annexed notice (or order); that I was

then and there a notary public in and for said county and
87 State; that I exercised the power of that office in taking such deposition; that by virtue thereof, I was then and there authorized to administer an oath; that said witness, before testifying was duly sworn to testify the whole truth and nothing but the truth relative to the cause specified in the annexed notice (or order); that the testimony of said witness was correctly read over to him by me before he signed the same; that no examination was conducted on behalf of the plaintiff; that the examination was conducted on behalf of the defendant by William Henry Lex, Esq., and that said depositions were adjourned from Monday September 16th until Tuesday September 17th and from thence until Wednesday September 18, 1895, at which time they were concluded.

Witness my hand and seal this eighteenth day of September, 1895.

[NOTARIAL SEAL.] CHARLES E. LEX,
Notary Public.

Witness fees	$1 50
Notarial "	10 50
	$12 00

Paid by defendant.

United States Circuit Court, Fifth Division, District of Minnesota.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY, Defendant.

It is hereby stipulated by and between the parties plaintiff and defendant in the above-entitled action that the deposition- and testimony of A. E. Stilwell, Robert B. Cone and others, residing at Kansas City in the State of Missouri witnesses on behalf of said defendant shall be taken by and before any notary public residing at Kansas City, Missouri, whose official character as such notary public shall be sufficiently proven by his official seal and an impression thereof affixed to or stamped upon his return hereto; and such notary public is hereby agreed upon and appointed to take the deposition- of said witnesses, at 9 o'clock a. m., on Monday, September 16th, 1895, at the office of Messrs. Trimble and Braley, N. W. corner Seventh and Wyandotte Sts., Kansas City, Missouri; and said parties hereby waive any and all objections to said notary public, and waive the issuing of any commission from said court herein, and hereby agree that said deposition- of said witnesses shall have the
88 same force and effect as if taken upon commission duly issued herein; and said parties waive any and all notices and prerequisite forms required by law or the rule of court for the taking of depositions; but said parties reserve to themselves the right to object to the competency and admissibility of said testimony, interrogatories and cross-interrogatories, and to any of the same, and to any of the answers thereto respectively, in like manner and upon

the same grounds as if said witnesses were present and orally examined in open court upon the trial of this cause which is at issue and in said court depending.

And it is further stipulated that said depositions may be adjourned from day to day until the same are fully completed. And it is agreed that the deposition of the Prudential Life Insurance Company taken July 29th, 1895, at Newark, N. J., at the instance of the plaintiff shall also be decreed to have been taken under the above-mentioned terms, the taking of same before filing of replication being waived.

Dated Sept. 5th, 1895.

J. B. RICHARDS,
Attorney for Plaintiff.
WM. C. WHITE,
Attorney for Defendant.

United States Circuit Court, Fifth Division, District of Minnesota.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY, Defendants.

Depositions of Arthur E. Stilwell and Robert B. Cone, taken before me, Richard H. Stewart, a notary public within and for the county of Jackson and State of Missouri, beginning on the 16th day of September, 1895, at 9 o'clock a. m., pursuant to the annexed stipulation and notice.

At ten o'clock a. m. September 16th, 1895, the defendant in the above-entitled action appears by its attorney J. McD. Trimble and the complainant failing to appear either in person or by attorney, the examination of witnesses is proceeded with pursuant to the annexed notice and stipulation.

ARTHUR E. STILWELL, being by me first duly affirmed to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Q. What is your given name Mr. Stilwell?
A. Arthur E. Stilwell.
89 Q. Where do you live?
A. Kansas City.
Q. What connection if any, have you with the defendant, The Missouri, Kansas & Texas Trust Company?
A. I am president of the company.
Q. How long have you been president of this company?
A. About five years; before that I was vice-president.
Q. Have you been connected with it continuously since its organization?
A. I have.
Q. You are familiar with the loan which was made to the plain-

tiffs in this case, and the notes and mortgage which were taken back from them to secure the payment of the loan, are you?

A. Yes.

Q. Were you ever engaged in the life-insurance business?

A. Yes, between eight and ten years.

Q. In what capacity were you connected with the life-insurance business?

A. I was special agent for the Travelers' Insurance Company in Illinois, and I was state agent in Connecticut and Rhode Island, and afterwards was appointed by the home office to go throughout the United States and help reorganize their life department. This position I occupied when I became connected with the Missouri, Kansas & Texas Trust Company.

Q. Are you familiar with the life-insurance business, and with the character of business done by the principal life insurance companies in the United States, and with the premiums which they charge for their risks?

A. Very familiar, having made a thorough study of it while I was in the business. I invented four insurance contracts which have been adopted by the Penn Mutual one, and three of the plans were adopted by the Travelers' Insurance Company. I received about six thousand dollars in royalties on these plans, which are the only royalties that I have ever heard of being paid in the United States on any insurance contract.

Q. Are you familiar with life insurance on what is known as the endowment plan?

A. Very familiar.

Q. What is an endowment policy.

A. It is a contract of life insurance, whereby the insurance company in consideration of an agreed premium, insures the life of a person for a fixed term of years, and promises to pay to the
90 beneficiary named in the policy a specified sum of money in case the insured dies within the period named, and to pay the money to the insured himself in case he survives the fixed term.

Q. Do you know what premiums are charged by the principal life insurance companies of the United States for insurance on the endowment plan for a period of ten years on a person thirty years of age?

A. I do.

Q. What are they?

A. They vary somewhat in different companies; the premiums for a ten-year endowment policy on the life of a person thirty years of age range from ninety-two dollars for each thousand dollars of insurance to one hundred and five dollars for each thousand dollars of insurance.

Q. Who invented or devised the plan on which the loan in this case was made?

A. I invented the plan on which this loan was made. Mr. Bentz of Philadelphia invented a similar plan on which the United Security of Philadelphia made similar loans; this is one of the largest trust companies in that State, doing the same character of business; their

rates were about the same as ours, the only difference being that we figured ten per cent. interest on the loan and they figured six per cent.; their rates otherwise are substantially the same as ours.

(Objected to by plaintiffs as immaterial.)

Q. As bearing upon the question as to whether or not you had any purpose in inventing this plan to charge usurious interest or to evade the usuary laws of any State, I will ask you about how it happened you hit upon this plan, or, in other words, what suggested it to you and why was it adopted by you?

(Objection by plaintiff, as calling for incompetent evidence, also as immaterial. Intent is best shown by the contract itself and intent by witness is not that of def't.)

A. The idea of charging an unlawful rate of interest, or of evading the usury laws of any State never once occurred to me. The plan was not adopted for any such purpose, nor on account of any such reasons. The idea was suggested to me in this way: Whilst I was engaged in the insurance business, I noticed that the insurance companies would insure the life of a person for ten years on the endowment plan for one thousand dollars, and that the insurance company would then loan out to some one else the sum of one thousand dollars for the term of ten years, so as to have a fund
91 ready to pay the endowment policy at the end of this term.

And I noticed also that a man would borrow, say, one thousand dollars for the term of ten years, at say, ten per cent. interest, and mortgage his homestead to pay it, and that the same man would then insure his life in some insurance company on the ten-year endowment plan for one thousand dollars for the purpose of having money enough in case he died during the term to pay off his mortgage, or to have a fund accumulated in the hands of the insurance company to pay off the mortgage when it became due in case he survived the ten-year term.

I saw that this man was paying to the loan company one hundred dollars a year for interest, and to the insurance company one hundred dollars a year for premiums, being an aggregate amount of one thousand dollars which he would pay to the loan company as interest, and one thousand dollars which he would pay to the insurance company as premiums during the ten years.

Now at the end of the ten years, if he lived that long, and if the insurance company was solvent, he would get back from the insurance company one thousand dollars, and he would take that one thousand dollars and pay off the principal of his debt. Seeing these things suggested to me the idea of combining the loan and the insurance into one contract, by providing that the borrower should pay to us what he had previously paid to both the loan company and the insurance company, and that we should agree with him to cancel the mortgage in case he died during the term, and if he lived to the end of the term and kept his contract to acknowledge a satisfaction of it. In this way the borrower would get just exactly the same advantages which he would previously have gotten

by his two contracts with the loan company and the insurance company; that is to say, there would be a loan to him of one thousand dollars for ten years at ten per cent. interest, and during the ten years he would pay out no more to us than under the old way he would pay out to both loan company and insurance company.

The borrower, however, under our plan has advantages over the old, viz: that he runs no risk of losing the premiums that he may have paid, as well as being unable to collect the amount of the policy in case he died during the term; whilst on our plan he gets his money in advance and out of that money it is for him to pay back the installments which go to the satisfaction of his interest, and compensation for the risk on his life, and the discharge of his principal debt. It is wholly immaterial to the borrower whether our company was ever solvent, or whether it will remain so.

After having thought out this plan, and after having be-
92 come connected with the Missouri, Kansas & Texas Trust Company, I put it in operation, with the expectation that it would be used more largely by persons who were able to buy a small piece of land, and desired to improve it for a home, and who wanted to borrow money for the purpose of the improvement. In such case we would loan them the money upon this plan, and thus enable them to repay it in small monthly payments which they could pay more readily than in larger installments at greater intervals, and at the same time assure the head of the family that in case he died during the existence of the mortgage that it would be cancelled and his homestead left free for his wife and children.

Q. I will ask you whether or not the plaintiff in this case would have to pay out as much to keep his contract with the defendant as he would have had to pay out if he had borrowed the thousand dollars for ten years at ten per cent interest and had insured his life on the endowment plan for ten years with an insurance company?

(Objection, immaterial and irrelevant.)

A. No, sir. Our terms on a contract like this would be fifteen dollars a month or one hundred and eighty dollars a year and for ten years eighteen hundred dollars. If the plaintiff had borrowed the money at ten per cent., and had taken out with the Travelers' Insurance Company which is the cheapest company known to me for taking a ten-year endowment policy in the United States, he would have had to pay one hundred dollars a year interest to the loan company, and have paid the Travelers' Insurance Company between ninety-two and ninety-three dollars a year at the age of thirty years making at least one hundred and ninety-two dollars a year or nineteen hundred and twenty dollars during the ten years as against eighteen hundred dollars which he would have paid on our plan.

Q. State whether or not in the conduct of the life-insurance business it is the rule to charge more for the risk where the premiums are payable monthly or quarterly, than when payable annually?

A. Yes, sir. I will give you an example. Where the Prudential

Insurance Company, or most any other straight life company would charge twenty dollars a year for straight life contract for one thousand dollars, payable annually, the Prudential charges for the same thing if paid in weekly installments thirty-one dollars a year or a difference of eleven dollars annually to cover the expenses of these smaller collections.

Q. I will ask you why this is.

A. Because it requires twelve times as much stationery and
93 postage, and twelve times as much clerical work to collect and take care of the monthly premiums as it does to collect and take care of the annual premiums, and four times as much for quarterly premiums as for annual ones.

Q. The contract which you made on behalf of the defendant in this case, with the Prudential Insurance Company of America was for insurance on what is called the renewable reducing plan. I will ask you whether life insurance companies would insure a given individual on that plan.

(Objected to as immaterial.)

A. Not to my knowledge. This plan was my own devising, and only covers a large number of risks. It would be impracticable on one life.

Q. Do you know of any insurance company which would insure any given individual on that plan?

(Objection. Immaterial.)

A. I do not.

Q. Do you know any place where the plaintiff could have gotten insurance on this plan?

(Objection. Immaterial.)

A I do not believe that he could have gotten it.

Q. Who acted for the Missouri, Kansas & Texas Trust Company in making the contract with the Prudential Insurance Company for insuring the lives of persons to whom the trust company might loan money on this plan?

(Objection. Immaterial.)

A. I negotiated the contract with the Prudential Insurance Company of America for the insurance on the lives of persons to whom the trust company might loan money on this plan. The rate agreed upon between the trust company and the Prudential Insurance Company was an exceedingly low one; in fact I was surprised when they agreed to charge so low a rate. The ordinary branch of the Prudential Insurance Company had not been in business long then, and made a very favorable contract with us. They took the insurance at a much lower rate than they would do if it were to be done over again. But it should be remembered that in fixing this low rate they took into consideration that they would not be at any expense in soliciting business or collecting premiums, or take any risk upon the premiums not being paid. It was also expected at

that time that the trust company would do a very large business on this plan, and would have a great many lives to insure with the Prudential Insurance Company under the contract.

94 Q. In providing for the monthly installments which should be paid to the defendant under loans which were made on this plan, what difference, if any, did you make on account of the different ages of different persons?

(*Q.*) Very little difference; only fractional; and we avoided taking any lives over forty years; we made no difference for any under thirty-five but required the same monthly payment to be paid by all persons under thirty-five years of age.

Q. I will ask you whether the defendant is still loaning money on this plan or whether it has ceased to do that business.

A. We have ceased to loan money on this plan.

Q. Why?

(Objection. Entirely immaterial.)

A. The expense of attending to the collections in the different cities the commissions paid agents in soliciting the business, and the fact that the expenses incident to the examination of the abstracts and the examination and the appraisement of the property on these small loans was about as great as if they had been larger, and we found no money in the business and abandoned it.

Q. How long since you have made any loans on this plan?

A. About two years. ARTHUR E. STILWELL.

Being unable to complete the taking of the depositions on behalf of the defendant on this day, the same were by me adjourned until tomorrow morning, September 17th, 1895, at nine o'clock a. m.

My commission expires Sept. 6th, 1897.

[NOTARIAL SEAL.] RICHARD H. STEWART,
Notary Public in and for Jackson County, Mo.

Being unable to complete the taking of these depositions on this, the 17th day of September, 1895, the same are by me adjourned to tomorrow morning, September 18th, 1895.

My commission expires Sept. 6th, 1897.

[NOTARIAL SEAL.] RICHARD H. STEWART,
Notary Public in and for Jackson County, Mo.

Being unable to complete the taking of these depositions on this the 18th day of September, 1895, the same are by me adjourned to tomorrow morning, September 19th, 1895.

My commission expires Sept. 6th, 1897.

[NOTARIAL SEAL.] RICHARD H. STEWART,
Notary Public in and for Jackson County, Mo.

95 Being unable to complete the taking of these depositions on this the 19th day of September, 1895, the same are by me adjourned to tomorrow morning, September 20th, 1895.

My commission expires Sept. 6th, 1897.

[NOTARIAL SEAL.] RICHARD H. STEWART,
Notary Public in and for Jackson County, Mo.

Being unable to complete the taking of these depositions on this the 20th day of September, 1895, the same are by me adjourned until tomorrow morning, September 21st 1895, at nine o'clock a. m.

My commission expires Sept. 6th, 1897.

[NOTARIAL SEAL.] RICHARD H. STEWART,
Notary Public in and for Jackson County, Mo.

Being unable to complete the taking of these depositions on this the 21st day of September, 1895, the taking of the same is by me adjourned until Monday, the 23rd day of September 1895, at nine o'clock a. m.

My commission expires Sept. 6th, 1897.

[NOTARIAL SEAL.] RICHARD H. STEWART,
Notary Public in and for Jackson County, Mo.

At nine o'clock, September 23rd 1895, the defendant in the above-entitled action appeared by its attorney J. McD. Trimble, and the plaintiffs herein appeared not, either in person or by attorney, and the taking of these depositions was resumed.

ROB'T B. CONE, a witness for defendant, of lawful age, being by me first duly examined, cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Q. Where do you live Mr. Cone?

A. In Kansas City, Missouri.

Q. How long have you lived here?

A. A little over eight years.

Q. What connection, if any, have you with the defendant The Missouri, Kansas & Texas Trust Company?

A. I have been associated with them for something like six years in various positions, until, at the present time, since about 1892, I have occupied the position of secretary.

Q. Are you familiar with the contract involved in this case, that is the notes and mortgage given by Theodore M. Krumseig and wife to the Missouri, Kansas & Texas Trust Company?

96 A. Yes, sir, I know all about it, and am familiar with all of its terms and conditions, and have been for several years.

Q. What, if anything, do you know about the life-insurance business?

A. I think I know a good deal about it. I was born and raised in Hartford, Connecticut, where everybody knows something of insurance. I worked for two years for the Travelers' Insurance Company. During the last year I have devoted a good deal of time to the study of the life-insurance business, and the various plans adopted by the different companies of the United States, and the rates charged, and have familiarized myself with the theory and practical operation of the business.

Q. What similarity, if any, does the contract in question in this case bear to a ten-year loan and a ten-year endowment policy?

(Objection by plaintiff. Incompetent. Contract speaks for itself.)

A. The contract involved in this case is similar to a ten-year loan

and a ten-year endowment policy. The borrower in this case has all of the benefits and advantages of both a ten-year loan and a ten-year endowment policy on his life, and other additional benefits and advantages. In fact the only difference between this contract and a straight loan and endowment policy, consist- in the additional and superior advantages which the borrower has, under this contract over and above those he would have in case he borrowed money for ten years and then insured his life for ten years on the endowment plan.

Q. What are these superior advantages which (c)institute) as you say the only difference between this contract and a straight ten-year loan and a ten-year endowment policy?

(Objection, irrelevant and immaterial.)

A. In the first place, under this contract, the plaintiff agrees to pay out as interest and as compensation for the agreement to cancel his debt in case of death, three hundred and sixty dollars per year, whilst if he had borrowed the same amount of money for ten years at ten per cent. and had insured his life for ten years for the same amount on the endowment plan, he would have been obliged to pay out at least three hundred and eighty-four dollars and ninety cents, if he paid annually. If he paid monthly it would be considerably more. Hence, one advantage which the plaintiff has in this contract over what he would have under the other arrangement is that this contract is cheaper to him by twenty-four dollars
97 and ninety cents per year, and cheaper in the aggregate by two hundred and forty-nine dollars than if he secured the same results by means of a ten-year straight loan, and a ten-year non-participating endowment policy. In short, this contract costs him thirty-six hundred dollars, whilst the other plan would cost him thirty-eight hundred and forty-nine dollars.

In making this comparison of cost, I have taken the rate charged by the Travelers' Insurance Company for a ten-year non-participating endowment policy, on the life of a person twenty-eight years of age. This is the rate when the premiums are payable annually, if it were payable in monthly installments the rate would be very much higher and the disparity between the cost of the two plans materially greater.

In the next place the advantage of the plaintiff on this plan, over the other, is that he takes no risk in getting the full fruits of his contract in case of his death, for by the mere fact of his death the unpaid portion of his debt is satisfied, in case he dies during the term, the contract by reason of his death, becomes fully performed and closed. Whilst, in case he insured his life in the ordinary way, his contract of insurance would not be performed and closed; his heirs would merely become entitled to performance, and would incur all of the expenses and risks incident to enforcing performance, that is, collecting the insurance. So you see that the plaintiff in this case gets certain results absolutely fixed at a cost of thirty-six hundred dollars, whilst under the other plan, he gets merely a promise of

the same results at a cost of thirty-eight hundred and forty-nine dollars.

(Motion to strike out answer on said grounds.)

Q. I notice, Mr. Cone, that in making your calculations as to the comparative cost of the two plans under consideration, you continue the annual premiums for the endowment policy at $92.45 throughout the entire term of ten years. Now it has been suggested to me that the plaintiffs' counsel claims that inasmuch as the defendant's loan is constantly decreasing and consequently that the amount that the defendant would lose in case of death is constantly growing less, the charge for the agreement to cancel the debt in case of death should be correspondingly decreased from year to year, or from month to month. Why is this not true?

A. It is a fact that the amount the defendant would lose in case of the plaintiff's death is growing less from time to time, but it is not true that the amount charged for the risk should be also
98 decreased. To illustrate: take any life-insurance contract, for instance one on the ten-year endowment plan that we have been talking about, and you will see that the amount that the insurance company will lose in case of death is constantly decreasing, but the annual premiums remain the same throughout the term. If I should obtain from an insurance company a ten-year endowment policy on my life for one thousand dollars, the premium would be the same each year during the term. Say the premium was one hundred dollars per year; now if I died during the first year the insurance company would lose nine hundred dollars on this contract; if I died after having paid five premiums the company would lose five hundred dollars; if I died during the last year, after having paid nine premiums the loss to the insurance company would be only one hundred dollars, so that you see whilst the possible loss to the insurance company is decreasing from year to year the premium remains the same. Now if the premiums were placed on a sliding scale so as to decrease in direct ratio to the (decreace) of the possible loss; then it would be necessary to charge a much larger premium at the beginning than is done now, in order to compensate for the risk.

(Motion to strike out answer after words "to illustrate" on grounds of immateriality and irrelevancy. (Comparison is made with endowment policies while this contract is simply ordinary life indemnity, with no endowment feature.)

Q. Mr. Cone, you are familiar with the life-insurance business, and know all about the terms of the contract involved in this case. Now if the contract involved in this case is not life insurance, why is it not?

(Objected to as clearly calling for incompetent evidence.)

A. I don't know what definition a lawyer would give to life insurance but in the ordinary acceptation of the words they mean a contract, whereby the insurer promises to pay out a certain sum of

money upon the death of a person, and Webster so defines it. Under this contract the defendant does not promise to pay out anything upon the death of a person. It delivered to the plaintiff at the beginning all of the money it agreed to deliver to him in any event. It merely promises not to ask a repayment of it in case he dies before he has paid it. It is true that a contract of life insurance and this contract both include a chance of death, but the one is a promise to pay something in the event of that death and the other is a promise to do nothing in case of death, but merely an agreement that his death will satisfy the debt. In the case of life insur-
99 ance the insurance company has in its hands all of the money, and the insured takes all of the risk of losing the premiums paid, and the risk of being unable to collect the amount of his policy in case of death, but under this contract, the plaintiff takes no risk whatever; he has the money from the start and the defendant takes all of the risk of being able to get it back again; the defendant fully performs the contract on its part in the beginning, and the contract is fully carried out (*bu*) it at the outset; there is nothing more for it to do, a complete performance of the terms of the contract depends solely upon the acts of the plaintiff, he gets the money in advance and makes all of the promises of future performance, and he does not have to rely upon any promise of the defendant for future performance.

It is immaterial to him whether the defendant is solvent or insolvent, and he has no concern in the question as to whether the defendant is ever willing or able to keep its contracts, as it will in no event owe him anything, but the reverse is true of life insurance.

Q. What are the rates charged by the principal life insurance companies of the United States for insurance on the ten-year endowment plan, at the age of twenty-eight years?

A. I have before me a set of figures taken from a general book on insurance rates of all life insurance companies in the United States and I have selected from these the rates of four of the prominent companies, with which I am most familiar, and I will quote you their rates as follows:

The Provident Life & Trust Co. of Philadelphia charges at the age of twenty-eight years $100.10 a year for one thousand dollars on the ten-year endowment plan. The New York Life Insurance Company charges $106.30. The Aetna Insurance Company of Hartford Conn., charges $95.89. The Travelers' Insurance Company of Hartford Conn., charges $92.45.

You will notice something of a discrepancy in the rates charged by these various companies, and I will give an explanation of the discrepancy, that in the two companies which have the two highest rates, policy-holders have some interest placed to their credit derived from certain profits of the company. The Travelers' Insurance Company which is also one of the four, is a non-participating rate, or as it is often spoken of a "stock company rate," in other words, the policy-holder will have to pay each year for a term of years an exact amount, and he receives at the end of that term simpl- the face of

his policy to the extent of the amount originally contracted for, and no profits from any source which the company may have.

Q. Did the defendant take out life insurance on the life of the plaintiff in this case?

A. Yes, sir.

100 Q. On what plan was that insurance obtained?

A. Upon the renewable reducing plan.

Q. In what insurance company did the defendant take out this insurance?

A. In the Prudential Insurance Company of America, at Newark, New Jersey.

Q. Was the insurance which the defendant obtained on the life of the plaintiff a single transaction or contract, or was it one that was covered by a blanket contract?

A. It was one that was covered by a blanket contract.

Q. Could the plaintiff or any other individual obtain for himself any insurance on this renewable reducing plan?

(Objected to as immaterial.)

A. At the rates that were given us, no. And to the best of my knowledge, I am certain that no insurance company does that kind of business in individual cases

Q. How long since the defendant has made any loans on this plan?

A. About two years.

Q. Why did it stop making loans on this plan?

(Objection. Immaterial.)

A. There was no profit in the transaction. Most of the loans made on this plan were small ones, and generally were made to persons of moderate means. The making of a small loan is attended with about as much expense as a large one; that is to say, the examination of the abstract of title, and examination and appraisement of the property, the handling of the loan and the collecting of the installments is just as great in a small loan as a larger one, and on account of the fact that most of these loans were made to persons of moderate means, delays and annoyances frequently occur in the collection of the installments, and the further fact that the installments were made payable monthly made largely increased expenses incident to the handling of the business and the collection of the installments. After an experience of about four years in making loans on this plan it was abandoned as being unprofitable.

ROB'T B. CONE.

STATE OF MISSOURI, }
County of Jackson, } *ss:*

Be it known that I took the annexed depositions pursuant to the annexed notice; that I was then and there a notary public in and for the county of Jackson in the State of Missouri; that I exercised the powers of that office in taking such depositions; that by

101 virtue thereof I was then and there authorized to administer an oath; that each witness, before testifying, was duly sworn

to testify the whole truth, and nothing but the truth, relative to the cause specified in the annexed notice; that the testimony of each witness was correctly read over to him by me before he signed the same; that the examination was conducted on behalf of the defendant by J. McD. Trimble, and that the plaintiff did not appear; that the same were taken stenographically in the presence of the witness and thereafter reduced to writing upon a typewriter, and were then read to the witness and by him subscribed in my presence.

Witness my hand and seal this 23rd day of September, 1895.

RICHARD H. STEWART,
Notary Public in and for Jackson County, Mo.

[NOTARIAL SEAL.]

My commission expires September 6, 1897.

Cost Bill.

Notary's fees—

Swearing witnesses	
Certificate and seal	$4 50
Foliage, 30 folios at $0.15	4 50
Witnesses, Pres. Arthur E. Stilwell, 1 day	1 00
Rob't B. Cone, 1 day	1 00

United States Circuit Court, Fifth Division, District of Minnesota.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY, Defendant.

It is hereby stipulated by and between the parties plaintiff and defendant in the above-entitled action, that the deposition and testimony of William S. Taylor, witness on behalf of said defendant, shall be taken at the office of Missouri, Kansas & Texas Trust Co., 400 Chestnut St., Philadelphia, by and before any notary public residing at Philadelphia, Penn., at 9 o'clock a. m. Oct. 1st, 1895; whose official character as such notary public shall be sufficiently proven by his official seal and an impression thereof affixed to or stamped upon his return hereto; and such notary public is hereby agreed upon and appointed to take the deposition of said witness; and said parties hereby waive any and all objections to such notary public, and waive the issuing of any commission from said court herein, and hereby agree that said deposition of said witness shall have the same force and effect as if taken upon commission duly issued herein; and said parties waive any and all notices and prerequisite forms required by law or rules of court for the taking of depositions; but said parties reserve the right to themselves to object to the competency and admissability of said testimony and to any of the same, and to any of the answers thereto respectively, in like manner and upon the same grounds as if said witness was present and orally examined in open court upon the trial of this cause which is at issue and in said court depending; and the taking of said deposition may be adjourned from day to

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day until the same is completed; and it is provided, however, that the taking of same shall not delay the final hearing of said matter above entitled.

Dated Sept. 25, 1895.

J. B. RICHARDS,
Attorney for Plaintiffs.
WM. C. WHITE,
Attorney for Defendant.

U. S. C. C., Fifth Division, Dis. of Minn.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs,
vs.
THE MISSOURI, KANSAS & TEXAS TRUST COMPANY, Defendant.

TUESDAY, *October* 1, 1895.

Present: W. H. Lex, Esq., for defendant.

Deposition of William Shipley Taylor, residing at Philadelphia, in the State of Pennsylvania, a witness called on behalf of the said defendant, taken before Charles E. Lex, notary public, in accordance with the stipulation duly filed in said cause.

WILLIAM SHIPLEY TAYLOR, having been duly affirmed according to law, deposes and says:

By Mr. LEX:

Q. Please give (you) age, residence, and occupation.

A. My age is forty-eight; I live at 6020 Overbrook avenue, Philadelphia; I am third vice-president and treasurer of the Missouri, Kansas & Texas Trust Company.

Q. Are you familiar with the contract made between your company and Theodore M. Krumseig and Louise Krumseig?

A. The form of the contract which our company has with Theodore M. Krumseig and Louise is similar to all our other forms. All the contracts are alike.

103 Q. What is the nature of your contract in this and other cases to which you have referred?

(Objection as incompetent.)

A. I have always described our contract, and my understanding of it, as the reverse of an endowment policy. The man in an endowment policy received his money at the end of ten years, and with us we give the man the money and we get it back during the ten years.

Q. So that in your case the borrower gets the money at the time he makes his application, provided that application is favorably considered by the company?

A. Yes, sir.

Q. He gets his money in advance?

A. Yes, sir; and pays it back in monthly installments.

Q. Is it or is it not therefore a loan contract?

A. Yes, sir; it is a loan contract. It is a regular guarantee with a clause of cancellation in case of the man's death. That is a clause of perpetual forbearance added.

Q. Did you in reference to your loan contracts such as you have just described, have any conversation with the insurance department of the State of Minnesota? If so, in your own way please give me the details of such conversation.

(Objected to as irrelevant and immaterial.)

A. Yes, sir; before doing any business in Minnesota, that we might be sure of our standing with the State, I went from Duluth to St. Paul and had an interview with the insurance commissioner of the State of Minnesota, I do not remember what his name was at that time, and explained the features of our company, our methods of doing business with mortgages throughout. He had his chief clerk with him, and we had a long conversation, I think I spent the great part of a day with him, and he told me before leaving that he was thoroughly satisfied that it was all right, that we did not come under the insurance commissioner in any way, and that nothing was required in the way of making entry of our company in that State. So we thought it was perfectly safe to do business there.

(Motion to strike out answer as irrelevant and immaterial.)

Q. Did you speak with him in reference to the necessity of the the defendant company complying with the insurance laws, and if so, what was the result of that?

(Objected to as irrelevant and immaterial.)

A. He decided that we did not come under the insurance commissioner at all, that we were not an insurance company,
104 and that we were not doing an insurance business, because, as I explained to him, his duties as commissioner were to look after insurance companies to see that they had reserve on hand in case the man died or at the maturity of the policy to be able to pay that debt, but with us, as we gave the man the money in advance, that there was no risk assumed by him as to the solvency of the company, and that was what he the commissioner was interested in.

Q. Was anything said in the interview as to the necessity of filing the charter of your company in any of the State departments?

(Objected to as irrelevant and immaterial.)

A. He told me it was not. It was mentioned, I asked him the question, and he told me it was not necessary for us to file the charter or do anything, that we were not responsible to any of them, and that we could make loans in the State without.

Q. What, if anything, was said by him in relation to your company being obliged to make a deposit with any of the departments of the State of Minnesota?

(Same objection as above.)

A. He said it was not required. I was very careful about that whole matter, to go to the insurance commissioner and explain very thoroughly, so that this question should be avoided in any way, and at first he did not understand our company, but he took a great deal of interest in the explanation and he thought it was an excellent plan. When we got through he quite complimented us on the scheme, which was new to him.

Q. When did this interview take place?

A. I cannot tell you when that was. I have not any data.

Q. How long after your company had organized about?

A. It must have been three years after, I should think. I am not positive whether it was in the winter of 1890 or 1891. I think it was in one of those years.

(Motion to strike out all foregoing testimony as to what State officers said, as immaterial. It appears also that it might not have occurred until after the contracts were made.)

Q. Reverting to the last contract that was made in this case with Theodore M. Krumseig and his wife, Louise, please explain what similarity, if any, it bears to a straight loan, or to what is
105 popularly known as an endowment policy? Describe in your own way the similarity or the difference between them.

(Objected to as incompetent.)

A. It is similar (*in*) a straight loan in that the borrower gets his money in advance. It is different from a straight loan in that the borrower gradually pays the loan off by installments, and that at the end of the period, if he has kept his installments paid up, the mortgage which he has given as security therefor is satisfied, with this very wise and safe additional feature, that if while the contract is running he should die, no matter whether he has paid one or many installments, the mortgage is immediately thereupon satisfied.

Q. Compare it with an endowment policy.

(Objected to as irrelevant and immaterial.)

A. With any of the standard companies it is cheaper than it would be possible for a man to borrow the money and to secure its repayment through life insurance in an endowment policy. The rate is much cheaper than any of the standard companies.

Q. So that taking into consideration the interest on a straight loan plus premium for life insurance, I understand you that an endowment policy would cost him more than the installments which he pays under your loan contract?

(Objection, same as above.)

A. That is right; yes, sir.

Q. What is the difference between your loan contract and an endowment policy as to the time when the borrower gets his money?

(Objection, same as foregoing.)

A. On the endowment policy he gets the money at the end of the term. With ours he gets it at the beginning.

Q. In getting his money as he does at the beginning, what risk does he take of the solvency of the company, or anything of that kind?

A. He does not take any. That was the point with the insurance commissioner.

Q. I understand you that that was one of the features that excited his approval?

A. Yes, sir.

W. S. TAYLOR.

Subscribed and affirmed to before me October 1, 1895.

[NOTARIAL SEAL.] CHARLES E. LEX,
Notary Public.

106 COMMONWEALTH OF PENNSYLVANIA, }
County of Philadelphia, } ss:

I, Charles E. Lex, notary public within and for the State and county aforesaid do certify that by virtue of the within and foregoing stipulation the testimony of William S. Taylor was taken before me at the office of Missouri Kansas and Texas Trust Company, 400 Chestnut street in the city of Philadelphia on the first day of October 1895 at 9 o'clock a. m. and was reduced to writing by C. H. Guilbart a disinterested person in my presence and under my direction. That said testimony was taken by and pursuant to the authority and requirements of the said stipulation. That William S. Taylor said witness before examination was affirmed to testify the whole truth and nothing but the truth relative to the cause specified in said stipulation and that the testimony of said witness was carefully read by William S. Taylor said witness and then by him subscribed in my presence. Additions and alterations made by witness.

[NOTARIAL SEAL]. CHARLES E. LEX,
Notary Public.

Witness fees.....	$1 50
Notary "	3 50
	$5 00 Paid by defendant.

That on the 11th day of January, A. D. 1896 a decision of the court ordering a decree for complainant was filed with the clerk of said court, which said decision and order is, in words and figures, as follows, to wit:

United States Circuit Court, Fifth Division, District of Minnesota.

THEODORE M. KRUMSEIG *et ux.*, Complainants,
vs.
MISSOURI, KANSAS & TEXAS TRUST COMPANY and Union Trust Company of Philadelphia, Pa., Defendants. } In Equity.

J. B. Richards, solicitor for complainants.
William C. White, solicitor for defendants.

Suit to Cancel a Mortgage on the Ground of Usury.

NELSON, *J.:*

The bill alleges that on or about July 29, 1890, complainant Theodore M. Krumseig made a written application to defendant, a corporation of the State of Missouri, for a loan of $2,000 to be
107 secured upon certain property owned by them in the city of Duluth, Minnesota, and among the conditions in said application was the following:

"In consideration of the above premises I agree to execute and deliver to the said company 10 promissory notes, each of the sum of $360 payable in monthly installments of $30, commencing at date of signing contract. The said notes cover principal sum loaned, interest and cost of guarantee to cancel debt in case of death, and shall be secured by good and sufficient deed of trust or mortgage executed by myself and wife on said ground and improvements. The contract hereafter to be entered into, if my application shall be accepted and contract entered into in writing between myself and said company, shall provide that the mortgage or deed of trust given to secure the above notes shall contain a clause guaranteeing, in case of my death before payment of any unpaid installments, a release of unpaid portion of debt, if I shall have promptly paid previous installments and kept other conditions. As part of foregoing condition I agree, before acceptance of this application and the execution of said contract, to pass such medical examination as may be required by said company, and to pay said company the usual fee of $3 therefor; and to pay all fees for recording deed of trust or mortgage."

That thereupon Theodore M. Krumseig, passed the medical examination required, paid the fee demanded, and complainants then executed ten certain promissory notes, each for the sum of $360, dated September 5, 1890, payable in monthly installments of $30, with interest at 10 per cent. after due, forty-one of which installments amounting to $1,230 have been paid; on the same day, in order to secure these notes, they executed and delivered to defendant Missouri, Kansas & Texas Trust Co., a mortgage on the premises, with the usual covenants of warranty and defeasance, reciting the indebtedness of $3,600 in manner and form aforesaid, and containing in addition thereto the following clause:

"And it is further understood and agreed by and between the said parties of the first part, their executors, administrators or assigns

and the said party of the second part, The Missouri, Kansas & Texas Trust Company, that in case said Theodore M. Krumseig, one of the parties of the first part, should die after the execution and delivery of the said notes and this mortgage, and within ten years (thereafter), each and every of the said notes remaining unpaid at the said date shall be surrendered to the executors or administrators of the said Theodore M. Krumseig, one of the parties of the
108 first part, and this mortgage shall be cancelled and satisfied; provided, however, that said parties of the first part shall have promptly paid each monthly installment that shall have become due prior to his death, according to the terms of the notes hereinbefore mentioned, and that he has not committed suicide within two years, and has not without written consent of the party of the second part visited the torrid zone, or personally engaged in the business of blasting, mining, or submarine operations, or in the manufacture, handling or transportation of explosives, or entered into the service of any railroad train, or on a steam or sailing vessel for two years."

The bill alleges further that the sole consideration for the notes and mortgage was: 1st. The sum of $1,970 together with the interest thereon from date until maturity of the installment notes; and, 2nd. The clause in the mortgage last referred to, which latter was in fact an arrangement between defendant and the Prudential Life Insurance Company of Newark, N. J., to save the former harmless from any loss that might occur to it in case of the death of complainant, Theodore M. Krumseig, during the term covered by the mortgage.

There is also an allegation that defendant has not complied with the laws of the State of Minnesota governing life insurance companies, and that the contract is therefore void. Complainants ask that the mortgage be cancelled of record and the remaining notes be delivered up to them.

The answer denies that the contract is usurious, and alleges that the sum of $1,970 received by complainants, with the legal interest thereon and the cost of the guaranty of defendant to cancel the loan in case of the death of Theodore M. Krumseig during the continuance of the contract, constituted a full and ample consideration for the notes and mortgage in question, and that the same was so understood and agreed to by complainants at the time of the execution of the contract.

A stipulation was subsequently entered into by which the Union Trust Company of Philadelphia, Pa., was made a party defendant.

This contract cannot be upheld; it is contrary to public policy, and tainted with usury. Ingenious, and novel in character, it must have taxed to the utmost the skill of the originator. It has about it certain features of life insurance, a plan denominated by the counsel and some of defendant's witnesses, "the reverse of endowment insurance." It is certainly not an ordinary life-insurance contract, in the general acceptation of the term.

109 One of defendant's witnesses describes it as follows: "It is similar to a straight loan, in that the borrower gets his

money in advance; it is different from a straight loan, in that the borrower gradually pays the loan off by installments, and that at the end of the period, if he has kept his installments paid up, the mortgage which he has given as security therefor is satisfied, with this * * * additional feature, that if while the contract is running he should die, no matter whether he has paid one or many installments, the mortgage is immediately thereupon satisfied."

The undoubted purpose of the defendant was to loan money, and at the same time secure as far as possible indemnity against loss to itself, at the expense of the borrower. The supreme court of Minnesota described a similar contract, in substance, as a loan of money with an agreement for perpetual forbearance in case of death, and holds that the contingency set up, the continuance of the life of the borrower, was a mere contrivance to cover usury. M. K. & T. Trust Co. *v.* McLachlan, 61 N. W. 560.

Complainants could not have obtained the loan without submitting to this feature of the contract, the result of which when carried out, is to give defendant a greater compensation for the use of the money than that allowed by the law of Minnesota.

It is undisputed that defendant had a contract with the Prudential Insurance Company of Newark, N. J., under which it secured indemnity against loss upon transactions similar to the one in question; and that in this instance it obtained a policy of insurance upon the life of Theodore M. Krumseig in favor of itself upon what is called the "Renewable, reducing term plan." Such policies were to be issued for ten successive years, and decreasing in amount payable each year; so that, as the payments were made upon the loan, the amount of insurance upon the life of the borrower was also decreased.

It is not necessary to decide whether this contract could be upheld, in case the lender had charged complainants merely the amount it paid the insurance company for indemnity; for it appears conclusively from the testimony that it bound them to pay a sum far in excess of the cost to it for this indemnity. Such a contract is usurious under the law of Minnesota, and the agreement for perpetual forbearance does not relieve it from the taint.

Complainants seek the cancellation of the mortgage and notes for usury. The supreme court of Minnesota in the case of Scott
110 *v.* Austin, 36 Minn., 460, held that under sec. 2214 Gen. St. 1894, which declares that all usurious notes, conveyances, contracts and securities "shall be void," except as to certain *bona fide* purchasers, it is not necessary for the party thus situated to tender or pay the amount of money received, as a condition of obtaining relief.

Upon the other point made by counsel for complainants, that such a contract is in violation of the laws of Minnesota, with reference to insurance companies, it is not necessary for the court to pass.

Complainants are entitled to a (decree) with costs, and it is so ordered.

In the case of John L. Foote *et ux. v.* these defendants, a decree will be entered in accordance with this decision.

Dated Jan. 10, 1896.

R. R. NELSON, *Judge.*

That on the 28th day of January, A. D. 1896, there was filed with the clerk of said court the final decree in said cause, which said final decree is, in words and figures, as follows, to wit:

Final Decree.

United States Circuit Court, District of Minnesota, Fifth Division.

THEODORE M. KRUMSEIG & LOUISE KRUMSEIG, Complainants, *vs.* MISSOURI, KANSAS & TEXAS TRUST COMPANY & UNION TRUST COMPANY, Defendants.	In Equity.

This cause came on to be heard at this term, the regular October term of said court in the year 1895, held at the city of Duluth, Minnesota, present, the Hon. R. R. Nelson, judge, and was argued by counsel, J. B. Richards, Esq., appearing for complainants, and W. C. White, Esq., appearing on behalf of defendant Missouri, Kansas & Texas Trust Company, and defendant Union Trust Company disclaiming all interest in or to the property, notes or mortgage described in the pleadings herein; and thereupon, upon consideration thereof,

It is ordered, adjudged and decreed as follows, viz: That the prayer of the complainants be granted; and that that certain mortgage of date September 5th, 1890, executed by complainants Theodore M. Krumseig and Louise Krumseig, his wife, mortgagors, and delivered to said Missouri, Kansas & Texas Trust Company,
111 defendant, as mortgagee, and recorded in the office of the register of deeds of St. Louis county, Minnesota, on the 5th day of September, 1890, in Book "50" of Mortgages on page 443 and following, cov- on the lot seven (7) of block sixty-two (62), of Portland division of Duluth, Minnesota according to the plat thereof duly recorded in the office of said register of deeds of St. Louis county and State of Minnesota, is void; and that the notes secured by said mortgage are void, to wit, the notes therein described, being the ten (10) promissory notes dated September 5th, 1890, each for the sum of three hundred sixty ($360) dollars, payable in monthly installments of $30 per month commencing with the 5th day of September, 1890, and ending with September 5th, 1900, executed to the defendants by the complainants; and that defendants have no interest in said lot 7, block 62 by virtue of said mortgage; and that the said mortgage is hereby ordered cancelled and discharged of record as fully as if satisfied by defendants in usual form upon full payment thereof; and said notes and each of them are hereby cancelled and ordered to be delivered up to complainants, or their at-

torney, on demand; and that said defendants are hereby forever enjoined from taking any action or proceeding for the enforcement of said notes or mortgage; and that the record in the office of the register of deeds of said St. Louis county, Minnesota, of a copy of this decree duly certified by the clerk of said court shall discharge the said mortgage from said records; and that the defendant, The Missouri, Kansas & Texas Trust Company pay to said complainants the sum of —— dollars ($—) for their costs and disbursements of this action to be taxed and inserted herein.

Dated Jan'y 25th, 1896. *Nunc pro tunc* as of Oct. 22nd, 1895.

By the court:

R. R. NELSON, *Judge.*

That on the 4th day of February, A. D. 1896, there was filed with the clerk of said court, by solicitor for defendant, its appeal from the order and decree herein, duly approved by the Honorable R. R. Nelson, judge of said court, which said appeal is, in words and figures, as follows, to wit:

United States Circuit Court, Fifth Division, District of Minnesota.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs, vs. MISSOURI, KANSAS & TEXAS TRUST COMPANY, Defendant.	In Equity. No. 177.

The above-named defendant, conceiving itself aggrieved
112 by the decree made and entered on the 28th day of January, 1896, in the above-entitled cause, does hereby appeal from said order and decree to the United States circuit court of appeals for the eighth circuit, for the reasons specified in the assignment of errors, which is filed herewith, and it prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the United States circuit court of appeals for the eighth circuit.

Dated Jan. 30th, 1896.

WM. C. WHITE,
Attorney for Defendant.

The foregoing claim of appeal is allowed.

Dated Feb'y 3, 1896.

R. R. NELSON,
Circuit Judge.

That on the same day, to wit, the 4th day of February, A. D. 1896, there was filed with the clerk of said court, by attorney for the defendant, its assignment of errors, which are, in words and figures, as follows, to wit:

Assignment of Errors.

United States Circuit Court, Fifth Division, District of Minnesota.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs, *vs.* MISSOURI, KANSAS & TEXAS TRUST COMPANY. } In Equity. No. 177.

Comes now the defendant, by William C. White, its attorney, and says that the decree in said cause is erroneous and against the just rights of said defendant. The copy of the record of said decree and the papers and proceedings in said cause, is made a part of this assignment of errors; and the said defendant says that there is manifest error in the ruling, decision and decree of said honorable court, and respectfully hereby makes the following assignment of errors in said cause:

I. The decision and decree herein were erroneous and improper, because there was no equity in said cause entitling the plaintiffs to the relief granted;

II. Because the decision and decree are not sustained by the evidence and are contrary thereto;

III. Because the decision and decree are contrary to law;

113 IV. Because the defendant was entitled to a decision and decree in its favor, for dismissal of plaintiffs' complaint and for costs.

Dated, Jan. 30th, 1896.

WM. C. WHITE,
Attorney for Defendant.

That on the same day, to wit: the 4th day of February, A. D. 1896, there was filed with the clerk of said court, by the attorney for defendant herein, its bond on appeal, which said bond is, in words and figures, as follows, to wit:

Bond on Appeal.

United States Circuit Court, Fifth Division, District of Minnesota.

THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Plaintiffs, *vs.* MISSOURI, KANSAS & TEXAS TRUST COMPANY, Defendant.

Know all men by these presents, that we, Missouri, Kansas and Texas Trust Company as principal, and A. E. Stilwell and J. McD. Trimble, as sureties, are held and firmly bound unto the plaintiffs, Theodore M. Krumseig and Louise Krumseig, in the full and just sum of five hundred dollars, to be paid to the said Theodore M. Krumseig and Louise Krumseig, their heirs, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and

severally by these presents. (*Dealed*) with our seals and dated this 31st day of January in the year of our Lord, one thousand eight hundred and ninety-six.

Whereas lately at the October, 1895, general term of the said United States circuit court, for the fifth division of the district of Minnesota, in a suit pending in said court between said Theodore M. Krumseig and Louise Krumseig, plaintiffs, and Missouri, Kansas & Texas Trust Company, defendant, a decree was rendered against the said defendant Missouri, Kansas & Texas Trust Company, and the said Missouri, Kansas & Texas Trust Company has obtained an appeal and filed a copy thereof in the clerk's office of said court to reverse the decree in the aforesaid suit, and a citation directed to the said Theodore M. Krumseig and Louise Krumseig, citing and admonishing them to be and appear in the United States
114 circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, in said circuit, on the 3rd day of April next.

Now the condition of the above obligation is such, that if the said Missouri, Kansas & Texas Trust Company shall (procecute) said appeal to effect, and answer all damages and costs if it fail to make the said plea good, then the above obligation to be void, else to remain in full force and virtue.

[CORPORATE SEAL.] MISSOURI, KANSAS & TEX. TRUST COMPANY, [SEAL.]
By A. E. STILWELL, *President.*
A. E. STILWELL. [SEAL.]
J. McD. TRIMBLE. [SEAL.]

Sealed and delivered in presence of—
F. B. WILCOX,
JAQUES O. NOLTHENIUS.

Attest: ROB'T B. CONE, *Sec'y.*

Approved by—
R. R. NELSON,
Circuit Judge.

STATE OF MISSOURI, } ss:
County of Jackson, }

On this 31st day of January, 1896, before me, a notary public within and for said county, personally appeared A. E. Stilwell and J. McD. Trimble to me known to be the persons described in and who executed the foregoing and within instrument as sureties, and acknowle-ged that they executed the same as their free act and deed; also at the same time and place before me appeared A. E. Stilwell, to me personally known, who being by me duly sworn, did say that he is the president of the Missouri, Kansas & Texas Trust Company, of Kansas City, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said cor-

poration by authority of its board of directors; and said A. E. Stilwell acknowledged said instrument to be the free act and deed of said corporation.

[NOTARIAL SEAL.] JNO. M. MASON,
Notary Public, Jackson County, State of Missouri.

My commission expires August 9, 1897.

115 STATE OF MISSOURI, } ss:
County of Jackson, }

On this 31st day of January, 1896 before me appeared A. E. Stilwell and J. McD. Trimble, and each being sworn, says each for himself that he is one of the sureties above named; that he is a resident and freeholder of the State of Missouri, and worth the amount of five hundred dollars specified in the foregoing bond, above his debts and liabilities and exclusive of his property exempt from execution.

A. E. STILWELL.
J. McD. TRIMBLE.

Subscribed and sworn to before me Jan'y 31st, 1896.

[NOTARIAL SEAL.] J. M. MASON,
Notary Public.

My commission expires Aug. 9th, 1897.

That on the 4th day of February, A. D. 1896, there was filed with the clerk of said court, the original citation in said cause, which said original citation is, in words and figures, as follows, to wit:

UNITED STATES OF AMERICA:

To Theodore M. Krumseig and Louise Krumseig, Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the eighth circuit at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal this day allowed by the United States circuit court for the district of Minnesota, fifth division, wherein The Missouri, Kansas & Texas Trust Company is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said Missouri, Kansas & Texas Trust Company as in said appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Seal of the U. S. Circuit Court, Dist. of Minnesota, Fifth Division.

Witness the Honorable R. R. Nelson, one of the judges of the circuit court for the district of Minnesota, this 3rd day of February, A. D. 1896.

R. R. NELSON,
Judge of the U. S. Circuit Court.

116 United States circuit court, district of Minnesota, fifth division. Theodore F. Krumseig & Louise Krumseig *vs.* Missouri, Kansas & Texas Trust Co., defendant. Citation. Original. Service of the within citation by copy is admitted this 4th day

of February, 1896, said copy being served upon and left with me at my office in Duluth, Minn., on said Feb'y 4th, 1896. J. B. Richards, att'y for Theodore M. Krumseig and Louise Krumseig, appellees.

Filed Feb. 4, 1896. Oscar B. Hillis, clerk. T. H. Pressnell, deputy.

UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, Fifth Division.

I, Oscar B. Hillis, clerk of said circuit court, do hereby certify and return to the honorable, the United States circuit court of appeals for the eighth circuit, that the foregoing, consisting of 154 pages, numbered consecutively from 1 to 154 inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree and all other proceedings in said cause, and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return, that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

Seal of the U. S. Circuit Court, Dist. of Minnesota, Third Division.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Duluth, in the district of Minnesota, this 15th day of February, A. D. 1896.

OSCAR B. HILLIS, *Clerk*,
By T. H. PRESSNELL, *Deputy*.

Filed Feb. 19, 1896. John D. Jordan, clerk.

117 And on the twenty-second day of February, A. D. 1896, an appearance of counsel for appellant was filed in said cause in the following words, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1896.

THE MISSOURI, KANSAS AND TEXAS TRUST COMPANY, Appellant, *vs.* THEODORE M. KRUMSIEG and LOUISE KRUMSIEG. } No. 756.

The clerk will enter my appearance as counsel for the appellant.
WILLIAM C. WHITE.

Endorsed: U. S. circuit court of appeals, eighth circuit, May term, 1896. No. 756. Missouri, Kansas and Texas Trust Co., appellant, *vs.* Theodore M. Krumsieg *et al.* Appearance. Filed Feb. 22, 1896. John D. Jordan, clerk. William C. White, counsel for appellant.

And on the eleventh day of March, A. D. 1896, an appearance of counsel for appellees was filed in said cause in the following words, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1896.

MISSOURI, KANSAS AND TEXAS TRUST COMPANY, Appellant, *vs.* THEODORE M. KRUMSEIG & LOUIS- KRUMSEIG. } No. 756.

The clerk will enter my appearance as counsel for the appellees.

J. B. RICHARDS.

118 Endorsed: U. S. circuit court of appeals, eighth circuit, May term, 1896. No. 756. Mo., Kan. & Tex. Trust Co., appellant, *vs.* Theo. M. Krumseig *et al.* Appearance. Filed Mar. 11, 1896. John D. Jordan, clerk. J. B. Richards, Duluth, Minn., counsel for appellees.

And on the eighteenth day of May, A. D. 1896, in the record of the proceedings of said United States circuit court of appeals an order was entered in said cause in the following words, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1896.

MONDAY, *May* 18, 1896.

THE MISSOURI, KANSAS AND TEXAS TRUST COMPANY, Appellant, *vs.* THEODORE M. KRUMSIEG *et al.*, Appellees. } No. 756.

Appeal from the circuit court of the United States for the district of Minnesota.

This cause having been called for hearing in its regular order, argument was commenced by Mr. William C. White on behalf of appellant, and, the hour of adjournment having arrived, further argument was postponed until tomorrow.

And on the nineteenth day of May, A. D. 1896, in the record of the proceedings of the said United States circuit court of appeals is an order of submission in said cause in the following words, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1896.

TUESDAY, *May* 19, 1896.

119 MISSOURI, KANSAS AND TEXAS TRUST COMPANY, Appellant, *vs.* THEODORE KRUMSIEG *et al.*, Appellees. } No. 756.

Appeal from the circuit court of the United States for the district of Minnesota.

This cause coming on this day for further hearing, argument was continued by Mr. J. B. Richards in behalf of appellees and concluded by Mr. William C. White in behalf of appellant.

Thereupon this cause was submitted to the court upon the transcript of record from said circuit court and the briefs of counsel filed herein.

And on the fifth day of November, A. D. 1896, an opinion of said circuit court of appeals was filed in said cause in the following words, to wit:

120 United States Circuit Court of Appeals, Eighth Circuit, May Term, A. D. 1896.

MISSOURI, KANSAS & TEXAS TRUST COMPANY, Appellant, *vs.* THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Appellees.	No. 756. Appeal from the Circuit Court of the United States for the District of Minnesota.

Mr. William C. White, for appellant.
Mr. J. B. Richards, for appellees.

Before Caldwell, Sanborn, and Thayer, circuit judges.

Statement.

This was a bill filed in the district court of St. Louis county, Minnesota, by Theodore M. Krumseig and Louise Krumseig, the appellees, against The Missouri, Kansas & Texas Trust Company, a corporation organized under the laws of Missouri, the appellant, to cancel a mortgage executed by the appellees to the appellant on real estate in the city of Duluth, upon the ground that the same was void for usury, and upon the further ground that it was a contract for life insurance and void because the appellant was a foreign corporation and had not complied with the laws of Minnesota to entitle it to do business in that State. On the application of the appellant the cause was removed from the State court into the circuit court of the United States for the district of Minnesota on the ground of the diverse citizenship of the parties.

On the twenty-ninth of July, 1890, Theodore M. Krumseig, one of the appellees, made application to the appellant to borrow
121 $2,000. The application was made according to a form prescribed by the appellant and reads as follows:

"I hereby make application to the Missouri, Kansas and Texas Trust Co., of Kansas City, Mo., for a loan of $2,000.00 upon lot No. seven (7), block No. sixty-two (62) of Portland Division addition, city of Duluth, county of St. Louis, State of Minnesota, which property I now own in fee and the abstract to which accompanies this application."

Here follow some statements relating to the domestic and business affairs of Krumseig and a description of the property to be mortgaged. The application then continues: "In consideration of the above premises I agree to execute and deliver to the said company 10 promissory notes, each of the sum of $360, payable in monthly installments of $30.00, commencing at date of signing con-

tract. The said notes cover principal sum loaned, interest and cost of guarantee to cancel debt in case of death, and shall be secured by good and sufficient deed of trust or mortgage executed by myself and wife on said ground and improvements.

"The contract hereafter to be entered into, if my application should be accepted and contract entered into in writing between myself and said company, shall provide that the mortgage or deed of trust given to secure the above notes shall contain a clause guaranteeing, in case of my death before payment of any unpaid installments, a release of unpaid portion of debt, if I shall have promptly paid previous installments and kept other conditions.

"As part of foregoing condition, I agree, before acceptance of this application and the execution of said contract, to pass such medical examination as may be required by said company, and to pay said company the usual fee of $3.00 therefor; and to pay all fees for recording deed of trust or mortgage.

"This application and proposal to stand open for acceptance for ten days from date hereof.

"(Signed) THEODORE M. KRUMSEIG.

"Date July 29th, 1890."

Krumseig submitted to a medical examination such as is required of applicants for life insurance, and executed the promissory notes and mortgage provided for in the application, the latter of which contains the following provision: "And it is further understood by and between the said parties of the first part, their executors, administrators or assigns and the said party of the second part, the Missouri, Kansas & Texas Trust Company, that in case said Theodore M. Krumseig, one of the parties of the first part should die after the execution and delivery of the said notes and this mortgage, and within ten years thereafter, each and every of the said notes remaining unpaid at the said date shall be surrendered to the executors or administrators of the said Theodore M. Krumseig, one of the parties of the first part, and this mortgage shall be
122 cancelled and satisfied; provided, however, that said parties of the first part shall have promptly paid each monthly installment that shall have become due prior to his death, according to the terms of the notes hereinbefore mentioned, and that he has not committed suicide within two years and has not without written consent of the party of the second part, visited the torrid zone, or personally engaged in the business of blasting, mining or submarine operations, or in the manufacture, handling or transportation of explosives, or entered into the service of any railroad train or on a steam or sailing vessel for two years."

The bill contains this allegation: "Plaintiffs further allege that said contract whereby upon the death of said Theodore M. Krumseig, as provided in said contract, defendant was to deliver up the notes and cancel the said mortgage of record, was and is and was so understood and agreed by and between all of the parties thereto, when made, to be a life-insurance contract on the life of said Theodore M. Krumseig, that the original application for the said loan of money

hereinbefore mentioned was on one of the printed blanks of the defendant, and said application, signed by said Theodore M. Krumseig, expressly stipulated that said Theodore M. Krumseig should pass such satisfactory medical examination as should be required by defendant, and should pay to the defendant a fee of $3.00 therefor, and that said application for the loan should not be deemed accepted and approved by defendant until a satisfactory medical examination of said Theodore M. Krumseig had been had; and that thereafter the defendant required the said Theodore M. Krumseig to pass and said Krumseig did pass a medical examination and did pay the said fee of $3.00 therefor, and said examination was by said defendant submitted to the Prudential Life Insurance Company, of Newark, N. J., with which company defendant had a contract to report on all of defendant's applications for loans in the said State of Minnesota, and said Prudential Company, having reported thereon, said application was thereupon duly accepted and the notes and mortgage herein described were thereupon executed and delivered to the defendant and plaintiffs allege on their information and belief, that upon favorable report as aforesaid by Prudential Life Insurance Co. and the said Theodore M. Krumseig 'risk,' defendant thereupon entered into a contract with said Prudential Co. whereby said Prudential Co. undertook and agreed to indemnify and save defendant harmless from all loss accruing to defendant under its said contract with the plaintiffs through the possible death of said Theodore M. Krumseig within the life of the said contract."

The answer denies that the contract is usurious, and touching the averment in the bill that it is a contract for life insurance, the answer "Denies the allegations of paragraph 7 of said complaint; denies that said contract was, is or was by either party thereto understood or agreed to be a life-insurance contract; but admits that it was stipulated that said Theodore M. Krumseig should pass
123 such satisfactory medical examination as should be required by defendant, and should pay a fee therefor to the medical examiner of $3.00, and that said examination was passed and said fee so paid and said examination submitted to the Prudential Life Insurance Company and that said company reported favorably thereon; but defendant denies that said Prudential Company undertook or agreed to indemnify and save defendant harmless from all or any loss which might accrue to defendant under its contract with plaintiffs through the possible death of said Krumseig or otherwise, and alleges that the contract with said Prudential Company was the ordinary and usual contract with it for the insurance for the period of said loan, of defendant's insurable interest in the life of said plaintiff."

The agreement between the Prudential Insurance Company and the appellant reads as follows:

"This agreement made and entered into this twenty-seventh day of February, in the year one thousand, eight hundred and eighty-nine by and between the Prudential Insurance Company of America, of Newark, N. J., hereinafter designated as the Prudential, and the

Missouri, Kansas & Texas Trust Company, of Kansas City, Mo., hereinafter designated as the trust company.

"Witnesseth: That the Prudential in consideration of the premiums hereinafter mentioned and upon the following terms and conditions agrees to insure in favor of the trust company the lives of certain persons whose physical condition may be acceptable to the said Prudential:

"First. The persons whose lives are proposed for insurance must be debtors unto the trust company in a sum equal, at least, to the amount of insurance requested.

"Second. The policies of insurance shall be issued upon the renewable reducing term plan. They may be severally renewed for not more than ten successive years and shall be non-participating. The premiums shall be adjusted on the basis of a term insurance for one year and the amount of insurance under each policy shall decrease each year according to the provisions of the seventh section of this agreement.

"Third. The trust company shall furnish to the Prudential for approval a list of medical examiners by whom the persons whose lives are to be insured shall be examined.

"Fourth. The expense of conducting the examination shall be borne by the Prudential.

"Fifth. The rates of premium per $1,000 shall be as given in the following table, by which the rate to be paid in each and every year over which each policy extends is that corresponding to the actual age of the life insured in that year.

124 *Premiums per* $1,000.

Age.	Annual.	Semi-annual.	Quarterly.
21	$9 50	$4 94	$2 52
22	9 64	5 01	2 55
23	9 81	5 10	2 60
24	9 99	5 19	2 65
25	10 17	5 29	2 70
26	10 37	5 39	2 75
27	10 57	5 50	2 80
28	10 80	5 62	2 86
29	11 02	5 73	2 92
30	11 27	5 86	2 99
31	11 52	5 99	3 05
32	11 80	6 14	3 13
33	12 09	6 29	3 20
34	12 38	6 44	3 28
35	12 70	6 60	3 37
36	13 02	6 77	3 45
37	13 36	6 95	3 54
38	13 74	7 14	3 64
39	14 11	7 34	3 74
40	14 50	7 54	3 84

Age.	Annual.	Semi-annual.	Quarterly.
41	$14 93	$7 76	$3 96
42	15 41	8 01	4 08
43	15 97	8 30	4 23
44	16 65	8 66	4 41
45	17 42	9 06	4 62
46	18 33	9 53	4 86
47	19 31	10 04	5 12
48	20 37	10 59	5 40
49	21 51	11 19	5 70
50	22 77	11 84	6 03
51	24 10	12 53	6 39
52	25 58	13 30	6 78
53	27 18	14 13	7 20
54	28 88	15 02	7 65
55	30 75	15 99	8 15
56	32 78	17 05	8 69
57	34 92	18 16	9 25
58	37 25	19 37	9 87
59	39 80	20 70	10 55
60	42 63	22 17	11 30
61	46 02	23 93	12 20
62	49 73	25 86	13 18
63	53 75	27 95	14 24
64	58 16	30 24	15 41
65	62 92	32 72	16 67
66	68 13	35 43	18 05
67	73 79	38 37	19 55
68	78 89	41 54	21 17
69	86 45	44 95	22 91
70	93 56	48 65	24 79

125 "Sixth. The trust company shall be allowed a commission of twenty-five per cent. on the premiums paid in the first year of each policy and a commission of ten per cent. on the premiums paid in each and every year thereafter during the continuance of the policy.

"Seventh. The amount of insurance to be mentioned in each policy shall be the amount of insurance at the beginning of its first year, and the amount of insurance under each and every policy shall decrease year by year in the proportion exhibited in the appended table, wherein the initial amount is $1,000.

" First year insurance is	$1,000
Second " " "	902
Third " " "	829
Fourth " " "	748
Fifth " " "	660
Sixth " " "	562
Seventh " " "	455
Eighth " " "	337
Ninth " " "	207
Tenth " " "	70

"Eighth. When claim is made by the trust company for the insurance under any policy, the said trust company shall furnish to the Prudential proofs of the death of the insured on the forms to be furnished by the Prudential for that purpose. It is also understood and agreed that no claim shall be made by the trust company for an amount greater than the amount of indebtedness of the person whose life was insured to the trust company at the time of his, or her, death.

"Ninth. Unless otherwise arranged by special agreement the premiums on the policies issued by the Prudential shall be due and payable at the home office of the said Prudential in the city of Newark, New Jersey, on the date mentioned in the policies, and if not so paid on any policy or policies, such corresponding policy or policies shall be null and void.

"Tenth. The policies of insurance are issued by the Prudential and accepted by the trust company with the distinct understanding and agreement that if any of the insured within two years from the date of the policy shall commit suicide, or shall visit, or travel, in the torrid zone without the written consent of the Prudential, or shall personally engage in any specially hazardous occupation or pursuit, as mentioned in the application, then the policies of insurance upon their lives shall cease and determine and be of non effect and void.

"Eleventh. The obligation of the Prudential to issue new policies to the trust company may be terminated at any time after thirty days' notice to the trust company.

126 "In witness whereof the parties to this agreement have by their respective presidents and secretaries signed and delivered the same the day and year first above written.

JOHN F. DRYDEN,
President Prudential Ins. Co. of America.
EDWARD S. JOHNSON,
Secretary Prudential Ins. Co. of America.
J. E. McKEIGHAN,
President Missouri, Kansas & Texas Trust Co.
E. J. DAVISON,
Secretary Missouri, Kansas & Texas Trust Co."

The answer admits that the defendant has not complied with the laws of Minnesota respecting the transaction of life-insurance business in the State.

The circuit court rendered a decree cancelling the mortgage, 17 Fed. Rep. 350. The defendant thereupon appealed the cause to this court.

CALDWELL, *J.*, after stating the case as above, delivered the opinion of the court:

The case of Missouri, Kansas & Texas Trust Co. *v.* McLachlan, 59 Minn. 468, involved the construction of one of the appellant's contracts identical in its provisions with the one here in suit. Judge Mitchell, speaking for the court in that case said: "We had supposed

that in the course of our professional and judicial experience we had met with about all the forms of contract which have been devised by the ingenuity of modern associations of this and similar kinds, but this one is entirely novel to us. It is certainly unique, and after a careful study of all its provisions it seems clear to us that it must have been contrived for the purpose of evading either the insurance laws or the usury laws, or both, of this State; but we shall take plaintiff at its word, and assume, without deciding, that it is not a life-insurance contract, and hence that the laws of this State prohibiting and declaring invalid such contracts made by a foreign insurance company which has not complied with our statutes are inapplicable. It remains to be considered whether the facts justify the conclusion that the scheme was devised as a cover for usury. It was on this ground that the trial court held the notes and mortgage void." And the court held that the scheme embodied in the application, notes and mortgage, was merely a colorable device to cover usury and that the notes and mortgage were usurious and void. This judgment of the supreme court of Minnesota is directly in point in the case at bar on the question as to whether the contract is usurious.

The statutes of Minnesota fix the legal rate of interest at seven per cent. and the highest conventional rate at ten per cent., and declare that "all bonds, bills, notes, assurances, conveyances, chattel mortgages, and all other contracts and securities whatsoever, and all deposits of goods, or anything whatever, whereupon or whereby
127 there shall be reserved, secured or taken any greater sum or value for the loan or forbearance of any money, goods, or things in action, than is above prescribed, shall be void," with exceptions that have no relation to this case. It is also provided that any person who has paid usurious interest may recover it back by action brought within two years after its payment, and that "where the original holder of an usurious note sells the same to an innocent purchaser, the maker of said note or his representatives shall have the right to recover back from the said original holder the amount of principal and interest paid by him on said note." Statutes of Minnesota, 1888, chap. 23, sections 1, 2, 3 and 4.

The loan was to be repaid in monthly instalments. Notes were given for these instalments which included both principal and interest. The payment of each monthly instalment reduced the principal of the debt by the amount of the principal included therein, and it extinguished the interest on that sum. Without reciting the testimony or setting out the extended calculations of the experts, it is sufficient to say that viewing the contract as a loan of money, the interest charged on the loan in excess of ten per cent. is nearly $500, after allowing the appellant the cost to it of the policy of insurance on Krumseig's life taken out in its favor upon the "renewable reducing plan" under its contract with the Prudential Insurance Company. It is immaterial what name is given to this life insurance which the appellant required Krumseig to take out in its favor as a condition of making the loan. By whatever name called, it was taken out for the benefit of the appellant at the cost and ex-

pense of Krumseig. Allowing the cost of this insurance to the appellant to be a legitimate charge, the fact remains that the contract stipulates for a large sum in excess of ten per cent.

It is urged that the obligation to repay the loan is contingent upon Krumseig's living, and that in the event of his death if he has "promptly paid previous instalments and kept other conditions," the appellant is bound to "release the unpaid portion of the debt." But in the contingency of Krumseig's death and the release of the unpaid portion of the debt, the appellant is indemnified against loss at Krumseig's expense, for he was made to purchase the insurance for the appellant's benefit. On this branch of the case, the supreme court of Minnesota in Missouri, Kansas & Texas Trust Co. *v.* McLachlan, *supra*, said: "The peculiar and unusual provisions of this contract themselves constitute intrinsic evidence sufficient to justify the finding of the existence of every essential element of usury, viz: That there was a loan, that the money was to be returned at all events, and that more than lawful interest was stipulated to be paid for the use of it. The only one of these which could be seriously claimed to be lacking was that the money was not to be paid at all events, but only upon a contingency, to wit, the continuance of the life of McLachlan; but the facts warrant the inference that this contingency was not *bona fide*, but was itself a mere contrivance to cover usury. The mere fact that the contract has the form of a contingency will not exempt it from the scrutiny of the court, which is bound to exercise its judgment in determining whether
128 the contingency be a real one, or a mere shift and device to cover usury. The circumstances would justify a finding that the contingency in this case was merely a colorable device to cover usury." We concur in the views here expressed and they find support in other cases. Missouri Valley Ins. Co. *v.* Kittle, 1 McCrary, 234; National Life Ins. Co. *v.* Harvey, 2 McCrary, 576; Clague *v.* Creditors, 2 La., 114.

But conceding that the notes and mortgage are void for usury, it is contended that the appellees cannot obtain the relief they seek except upon the condition of paying or tendering the principal of the loan and lawful interest. Undoubtedly, this is the general equity rule, but the rule has been abrogated by statute in the State of Minnesota. Construing the statute on the subject of usury which we have cited, the supreme court of the State upon full consideration, held that its provisions were intended to apply as well to actions brought by borrowers for relief against usurious notes or other securities as to those brought against them in which the usury is set up by way of defense; and that in the former equally with the latter, the note or other security whenever its usurious character is made to appear, should be declared void and ordered canceled and delivered up unconditionally and without requiring the borrower to repay the lender the amount loaned with legal interest or any part of it. Scott *v.* Austin, 36 Minn. 460, 464, reaffirmed in Exley *v.* Berryhill, 37 Minn. 182.

This decision was pronounced in a case where the mortgagor, without paying or tendering any part of the unpaid mortgage debt

and interest, brought a bill to set aside a sale to the mortgagee of the mortgaged premises under a power of sale, and to cancel the mortgage and notes upon the ground that the contract was usurious. The court found the contract was usurious and thereupon rendered a decree setting aside the sale of the mortgaged premises to the mortgagee under the power of sale contained in the mortgage, and requiring the notes and mortgage to be surrendered for cancellation and the mortgage canceled of record. The express holding of the court was that the complainant was entitled to this relief under the statute without paying or tendering any part of the debt or interest. The decision is grounded solely on the statute. The court recognizes the general rule of equity that a maker of a usurious contract cannot maintain a bill to cancel the same for usury without first paying or offering to pay the principal sum borrowed with lawful interest. The court holds, however, that this rule of equity is abrogated by the statute which we have cited, and that under that statute conveyances and mortgages made to secure a usurious contract are void and that the statute makes it obligatory on the court when the usury is established at the suit of the maker of the usurious contract to annul and cancel the contract with all conveyances given to secure performance of the same, without requiring the plaintiff to pay any part of the usurious debt or interest.

The judicial department of every government is the rightful exponent of its laws and the construction placed upon the statute of Minnesota by the supreme court of the State is conclusive in this court. The judicial interpretation of a State statute by the
129 supreme court of the State becomes in legal effect a part of the text of the statute itself. Bergman *v.* Bly, 27 U. S. App. 650, 13 C. C. A. 319.

Other States have statutes similar to the Minnesota statute, among them, New York (1 Pomeroy's Eq. Juris. sec. 391, note 1; Bissell *v.* Kellogg, 60 Barb. 617) and Arkansas. The Arkansas statute is more comprehensive than the Minnesota or New York statute, in that it extends the right to have the usurious securities canceled to the vendees, assignees or creditors of the maker of the usurious contract; it declares that every conveyance or lien given to secure a usurious contract "may be canceled and annulled at the suit of the maker of such usurious contract or his vendees, assigns, or creditors;" and in terms provides, that "neither the maker of the usurious contract nor his vendees, assigns or creditors * * * shall be required to tender or pay any part of the usurious debt or interest as a condition of having such contract and any conveyance, mortgage, pledge or other lien given to secure its payment or executed in furtherance thereof, enjoined, canceled and annulled, and any rule of law, equity or practice to the contrary is abrogated." Sandels & Hill's Dig. Stats. of Arkansas, 1894, chap. 110, secs. 5086, 5088.

A further contention of the appellant is that a State statute which changes a rule of equity law is not obligatory on a Federal court and that, therefore, the statute of Minnesota providing for the unconditional cancellation of conveyances, mortgages and other liens given to secure the payment of usurious contracts will not be given

effect by a Federal court of equity sitting in that State in cases where it applies. It will be conceded that if this suit had remained in the State court where it was originally brought, that the appellees would have had the benefit of the State statute. Did they lose that right by the removal of the cause into the Federal court? The practice in the Federal courts in suits in equity is regulated by themselves and by rules established by the Supreme Court of the United States under the authority of an act of Congress, and are uniform throughout the United States and cannot be varied by State laws. But the question in this case is not one of mere practice but of substantive law. The bill seeks to cancel a mortgage on real estate situated in the State of Minnesota; the mortgage is a cloud upon the title of the complainant which under the statute of Minnesota he is entitled to have removed unconditionally. The mode of proceeding to accomplish this result is the same in the Federal courts that it is in the State courts, namely, by bill in equity. The statute is not, therefore, a practice act; it abrogates a rule of equity law and secures to the maker of the usurious securities a substantive right which may be enforced according to the established and well-understood equity practice. It is immaterial whether this right be called legal or equitable; it is an absolute right, and one of which no court can deprive the party. Its enforcement is not dependent on the discretion of the chancellor, nor can a rule of decision based on the supposed authority of the maxim that "he who asks equity must do equity," prevail over a positive statute expressly abrogating that rule of decision. When a court of equity is called upon
130 to deal with a right given by statute, then it accepts and acts upon that other maxim that "equity follows the law." It is not competent for any court to take from the citizen a right secured to him by a valid exercise of legislative power. "Rights," says the Supreme Court of the United States, "under our system of law and procedure do not rest in the discretionary authority of any officer, judicial or otherwise." *In re* Parker, 131 U. S. 221.

In the absence of a statute, the equity rule of decision that we are considering prevails alike in the State and Federal courts, and if a statute is ineffectual to abrogate it in one court it is not perceived why it is not equally ineffectual to abrogate it in the other, and the result would be to make a judge-made rule of law paramount to the legislative will. A rule of equity law is no more beyond legislative control than a rule of the common law; both may be abrogated at the pleasure of the legislature. The statute was designed to make the usury laws of the State effective. It is well known that the equity rule of decision, the application of which the appellant is insisting on in this case, rendered the usury law nugatory in many cases. By taking a mortgage with a power of sale the usurer was sure of his mortgage securities to the extent of the principal of the loan and legal interest, notwithstanding the statute declared the contract and securities void. Moreover, the Minnesota statute deals with conveyances and titles to real estate and to the removal of clouds therefrom, and it never was doubted that the Federal courts will enforce the right given by the State law in such cases, in the mode appro-

priate to those courts. The laws of the State in which land is situated control exclusively its alienation and transfer and the effect and construction of instruments intended to convey it; (United States *v.* Fox, 94 U. S. 315; United States *v.* Crosby, 7 Cranch 115; Clark *v.* Graham, 6 Wheat. 577; McGoon *v.* Scales, 9 Wall. 23) and all such laws in existence when a contract in regard to real estate is made, including the contract of mortgage, enter into and become a part of such contract. Brine *v.* Hartford Fire Ins. Co., 96 U. S. 627.

"The State legislatures certainly have no authority to prescribe the forms and modes of proceeding in the courts of the United States; but having created a right, and at the same time prescribed a remedy to enforce it, if the remedy prescribed is substantially consistent with the ordinary modes of proceeding on the chancery side of the Federal courts, no reason exists why it should not be pursued in the same form as it is in the State courts; on the contrary, propriety and convenience suggest, that the practice should not materially differ, where titles to lands are the subject of investigation. And such is the constant course of the Federal courts. * * * The undoubted truth is, that when investigating and decreeing on titles in this country, we must deal with them, in practice, as we find them, and accommodate our modes of proceeding, in a considerable degree, to the nature of the case, and the character of the equities involved in the controversy, so as to give effect to State legislation and State policy; not departing, however, from what legitimately belongs to the practice of a court of chancery." Clark *v.* Smith, 13 Pet. 195.

131 It would be an unheard of doctrine to say that a State statute affecting conveyances and the removal of clouds upon the title of real estate and giving full effect to an established State policy on a subject confessedly within the exclusive domain of State legislation should not be obligatory on a Federal court held in the State in a case coming within the purview of the statute. No decision of the Supreme Court of the United States has been cited, and it is believed none can be found supporting such a doctrine.

Under the operation of the rule here contended for, we should have two rules of decision on the same facts; one for the State court and one for the Federal court, the former based on a valid exercise of the legislative power of the State, and the latter based on nothing but a rule of decision of chancery courts having no legislative sanction whatever. As a result of such diverse rules of decision, each party to a suit would engage in an unseemly struggle to get into that jurisdiction whose rule of decision favored his side of the case. Indeed, this is precisely what occurred here. This case was removed from the State to the Federal court in the hope that the Federal court would disregard the State statute. There are a few cases in which the rule of decision in the Federal and State courts may vary, but they relate to questions of general commercial law which are not dependent upon any statute. Whenever a right is given by State statute, it is obligatory on both courts to enforce it.

The insurance feature of the contract remains to be considered. To explain and define the nature of the contract, the appellant called three expert witnesses. Mr. Lunger, the actuary of the Prudential Insurance Company, in his testimony says: "In brief, the contract is a combination of a mortgage loan payable in instalments, and a life-insurance policy." Mr. Stillwell, the president of the appellant company says: "I invented the plan on which this loan was made;" and he says his invention consists in "combining the loan and the insurance into one contract." Mr. Cone, secretary of the appellant company, testifies that "the contract involved in this case is similar to a ten-year loan and a ten-year endowment policy. The borrower in this case has all of the benefits and advantages of both a ten-year loan and a ten-year endowment policy on his life, and other additional benefits and advantages. In fact the only difference between this contract and a straight loan and endowment policy, consists in the additional and superior advantages which the borrower has, under this contract, over and above those he would have in case he borrowed money for ten years and then insured his life for ten years on the endowment plan." Accepting the construction of this contract given by the appellant's expert witnesses, one of whom, to use his own language, "invented the plan," we must hold that the contract is, in the language of another of appellant's witnesses, "a combination of a mortgage loan * * * and a life-insurance policy."

Viewed as a contract for life insurance either in whole or in part, it is void for non-compliance with the insurance laws of the State of Minnesota. These laws impose numerous conditions on
132 foreign insurance companies doing business in the State and punish criminally the officers and agents of any insurance company doing business in the State contrary to their provisions. Statutes of Minn. 1878, chap. 34, title 6, sections 291–297.

It is admitted that the appellant did not qualify itself to do an insurance business in the State. Upon these facts, two familiar rules of decision come into play; one, that a penalty implies a prohibition of the thing itself, on the doing of which the penalty is to accrue though there are no prohibitory words in the statute; and the other is that a court of justice will give no assistance to the enforcement of contracts which the law of the land has interdicted. Swann *v.* Swann, 21 Fed. Rep. 299, 306.

Applying these well-settled rules to the contract of insurance, it must be held illegal and void, and such we understand to be the holding of the supreme court of Minnesota. Seamans, receiver, *v.* Christian Brothers Mill Co, Ms. Op. supreme court of Minnesota, October term, 1896.

A court of equity will not require the appellees to await a suit against them on the illegal contract to which they have an absolute defense, but will relieve them by ordering the contract executed in violation of the statute to be surrendered and canceled. The remedy of cancellation is simply the equitable proceeding identical with the setting up of the illegality as a defense to defeat a recovery at law and thus get rid of the contract as a binding executory obligation.

2 Pom. Eq. Juris. sec. 940. The parties in this case are not *in pari delicto*. The appellant is the party responsible for the contract. It must be conclusively presumed to know that it was doing an illegal act, and it induced the appellees to enter into the contract of insurance in ignorance of its illegality. The appellees had a right to presume that the appellant had qualified itself to do an insurance business in the State. Ehrman *v.* Teutonia Ins. Co., 1 Fed. Rep. 471. Where one party to an illegal executory contract is comparatively the more innocent, a court of equity may grant him full affirmative relief by cancelling the contract. 2 Pom. Eq. Juris., sections 941, 942.

The decree of the circuit court is affirmed.

THAYER, *J.*, concurring:

I concur in the foregoing order affirming the decree of the circuit court on the ground stated in the opinion-in-chief, that the loan was usurious, and that the agreement under and by virtue of which the same was made was a mere device to cover usury. I also concur in the view that the Minnesota statute referred to in the opinion, as construed by the highest court of the State, creates a new or enlarged equitable right, which the Federal courts, as well as the State courts, must enforce. Reynolds *v.* Crawfordsville Bank, 112 U. S., 405, 410; Broderick's Will, 21 Wallace, 503, 520; *Ex parte* McNeil, 13 Wallace, 236, 243. I express no opinion with reference to the question whether the contract was voidable on the ground that it was entered into in violation of the insurance laws of the State of Minnesota.

SANBORN, *J.*, dissenting:

I dissent from the conclusion of the majority of the court in this case on the ground that "the equity jurisdiction conferred on the Federal courts is the same as that which the high court of chancery in England possesses; is subject to neither limitation nor restraint by State legislation, and is uniform throughout the different States of the Union" (Payne *v.* Hook, 7 Wall., 425, 430); that it "does not receive any modification from the legislation of the States or the practice of their courts having similar powers" (Green's Administratrix *v.* Creighton, 23 How., 90, 105); that consequently no act of the legislature of Minnesota could deprive the Federal courts sitting in equity of the power or relieve them of the duty to enforce and apply the established principle of equity jurisprudence to this case, that he who seeks equity must do equity, and to require the appellees to pay to the appellant what they justly owe for principal and lawful interest as a condition of granting the relief they ask. Tiffany *v.* Boatman's Institution, 18 Wall., 375, 385; Robinson *v.* Campbell, 3 Wheat., 211, 222; United States *v.* Howland, 4 Wheat., 108, 114; Suydam *v.* Broadnax, 14 Peters, 67; The Union Bank of Tennessee *v.* Jolly's Administrators, 18 How., 503, 507; Noonan *v.* Lee, 2 Black, 499.

Filed November 5, 1896.

And on the fifth day of November, A. D. 1896, in the record of the proceedings of the said United States circuit court of appeals is an entry of decree in said cause in the following words, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1896.

THURSDAY, *November* 5, 1896.

MISSOURI, KANSAS AND TEXAS TRUST COMPANY, Appellant,
vs.
THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Appellees. } No. 756.

Appeal from the circuit court of the United States for the district of Minnesota.

134 This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Minnesota and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed with costs, and that Theodore M. Krumsieg and Louise Krumsieg have and recover against the Missouri, Kansas and Texas Trust Company the sum of twenty dollars for their costs herein and have execution therefor.

November 5, 1896.

And on the tenth day of December, A. D. 1896, in the record of the proceedings of the said circuit court of appeals is an order in said cause granting leave to file petition for a rehearing in the following words, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1896.

THURSDAY, *December* 10, 1896.

MISSOURI, KANSAS AND TEXAS TRUST COMPANY, Appellant,
vs.
THEODORE M. KRUMSIEG *et al.*, Appellees. } No. 756.

Appeal from the circuit court of the United States for the district of Minnesota.

On motion of the appellant leave is granted to said appellant to file a petition for a rehearing in this cause forthwith.

And on the tenth day of December, A. D. 1896, a petition for a rehearing was filed in said cause by counsel for appellant in the following words, to wit:

135 United States Circuit Court of Appeals, Eighth Circuit.

MISSOURI, KANSAS & TEXAS TRUST COMPANY, Appellant,
vs.
THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Appellees.

Petition for Rehearing.

To the honorable the judges of the United States circuit court of appeals of the eighth circuit:

Now comes the appellant, Missouri, Kansas & Texas Trust Company, and respectfully petitions the court to set aside and vacate the judgment rendered by them in the above-entitled cause, affirming the judgment of the court below, and to grant to said appellant a rehearing thereof for the following reasons:

Point I.

The court erred in holding that in the case of The Missouri, Kansas & Texas Trust Company *vs.* McLachlan, 59 Minn., 468, involving the construction of one of the appellant's contracts
136 identical in its provisions with the one here in suit, the judgment of the supreme court of Minnesota is directly in point as applied to the case at bar on the question of usury in the contract, for the reason that the evidence in said case presented an entirely different state of facts upon which the judgment of the court was passed, as appellant in this case will show.

Point II.

The court erred in holding that the interest charged on the loan in the case at bar in excess of ten (10) per cent. is nearly five hundred (500) dollars or any sum, after allowing the appellant the cost to it of the policy of insurance on Krumseig's life, taken out under its contract with the Prudential Insurance Company.

Point III.

The court erred in assuming that the amount charged to appellees above the amount paid to the Prudential Insurance Company is the amount that should be calculated as interest; as this appellant is prepared conclusively to show.

Point IV.

The court erred in holding that in the contingency of Krumseig's death and the release of unpaid portion of the debt the appellant is indemnified against loss, either at Krumseig's expense or otherwise; a proper and careful calculation proving the contrary.

Point V.

The court erred in holding that a State can by legislation abrogate a rule of equity otherwise of universal application, and

through the judiciary of the State enforce that abrogation upon the Federal courts sitting in equity.

137 *Point* VI.

The court erred in finding on the testimony of witnesses in untechnical language and in spite of the conclusions therefrom of the same witnesses to the contrary, that the contract in question in the case at bar combined within its terms a life-insurance policy: more especially as a fair and careful consideration of the calculations made from the actual figures paid conclusively shows the contrary.

Point VII.

The court erred in various statements of facts in the case and the deductions therefrom; all of which will be particularized in the brief of appellant upon a rehearing in this matter.

This case is a test case for various others and deserves the most careful and candid consideration of the courts; and the appellant respectfully begs leave of the court to submit a brief in this matter as his argument upon the points involved.

Dated Duluth, Minn., December 5, 1896.

WILLIAM C. WHITE,
Attorney for Appellant.

Certificate of Counsel.

I, William C. White, counsel for Missouri, Kansas & Texas Trust Company, the appellant in the within-entitled cause, do hereby certify that the within and foregoing petition for rehearing thereof is made in good faith, and in the honest belief that the same should be granted. And I do further certify that in my opinion the grounds of the application as therein stated are sufficient in
138 law; and that said petition is not made for the purpose of vexation or delay, but that justice may be done. And I do further certify that the reason that the application was not sooner made is that I, said counsel, was continuously absent from Duluth and in the East until about ten days after notice of the decision in said cause was received from the clerk of said court, and that a copy of the opinion was, upon my return, immediately ordered by me and was not received until the May term of said court was closed; and that thereupon I immediately wired to Justice Walter H. Sanborn and received response at once from him; copies of which telegrams are printed below.

Dated Duluth, December 5, 1896.

WILLIAM C. WHITE,
Att'y for Appellant.

"DULUTH, *Dec. 4th*, 1896.

"To Hon. Walter H. Sanborn, judge U. S. circuit court appeals, St. Paul, Minn:

"I was in the East when notice decision came in case Krumseig *vs.* Missouri, Kansas & Texas Trust Company. Have just received

opinion and desire rehearing, but understand term about closing. Will you enter order extending time to file petition for thirty days? Please answer.

"WM. C. WHITE."

"DEC. 4, 1896.

"Dated St. Paul, Minn.

"To Wm. C. White:

"May term here has closed, but court will probably allow you to file petition at December term, which opens in St. Louis Monday next.

"WALTER H. SANBORN."

Endorsed: Filed by leave of court December 10, 1896. John D. Jordan, clerk.

139 And on the fourteenth day of December, A. D. 1896, in the record of the proceedings of said United States circuit court of appeals is an order denying the petition for a rehearing in the following words, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1896.

MONDAY, *December* 14, 1896.

THE MISSOURI, KANSAS AND TEXAS TRUST COMPANY, Appellant, *vs.* THEODORE M. KRUMSIEG *et al.*, Appellees. } No. 756.

Appeal from the circuit court of the United States for the district of Minnesota.

This cause came on this day to be heard upon the petition for a rehearing filed by counsel for the appellant.

On consideration whereof it is now here ordered by this court that said petition for a rehearing of this cause be, and the same is hereby, denied.

December 14, 1896.

And on the eighteenth day of January, A. D. 1897, a petition by counsel for appellant for an order to recall the mandate of this court was filed in said cause in the following words, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

MISSOURI, KANSAS & TEXAS TRUST COMPANY, Appellant, *vs.* THEODORE M. KRUMSEIG and LOUISE KRUMSEIG, Appellees.

To the honorable the United States circuit court of appeals for the eighth circuit:

The above-named appellant, Missouri, Kansas & Texas
140 Trust Company, petitioner, by this its petition alleges that in the above-entitled matter the judgment of this honorable

court was rendered on or about the 6th day of November, 1896, affirming the judgment of the court below, and that thereafter and on or about the 5th day of December, 1896, a petition for a rehearing of said matter was filed by said appellant, which was thereafter and on the 14th day of December, 1896, denied.

Your petitioner further says that notice of the denial of said petition for a rehearing in said matter was mailed by the clerk of said court in due season and reached the office of William C. White, counsel for petitioner, on the 17th day of December, 1896, and that thereupon said William C. White immediately wrote and on said day mailed to the general counsel of appellant, at Kansas City, Missouri, the notice of the denial of rehearing in said matter, and that no opinion had been filed, and suggested to said general counsel the importance of the question involved, upon which this honorable court were at variance, to wit, the question involving the jurisdiction of the circuit courts in certain equity cases, and suggested further to said counsel that said matter be presented to the Supreme Court of the United States upon an application to that court for a writ of certiorari for the reviewal of said case. Your petitioner further alleges that no response was received to said letter of December 17th, 1896, to said general counsel, and that on the 31st day of December, 1896, said William C. White again wrote to the general counsel of the appellant, at Kansas City, Missouri, again calling attention to the status of the case and asking for an answer to the letter of December 17th aforesaid, and that thereupon and on the 7th day of January, 1897, said general counsel, at Kansas City, wrote said William C. White, replying to said letter of December 17th, 1896, and requested said William C. White, as counsel in said case, to take such steps immediately as might be necessary to have said case reviewed by the Supreme Court of the United States upon certiorari proceedings as aforesaid, which letter was received by said William C. White on the 9th day of January, 1897.

141 Your petitioner further alleges that on the 6th day of January, 1897, said William C. White received notice from the clerk of this court, of date January 4th, 1897, stating that the mandate in this case was on said date issued and sent to the clerk of the United States circuit court at Duluth, Minnesota; and your petitioner alleges that in the previous correspondence between said William C. White and the general counsel for appellant said William C. White had urged counsel to respond immediately, but had not stated that the time for issuing said mandate would expire on January 4th or 5th, 1897, and upon information and belief alleges that said general counsel were not aware of that fact, but took the time necessary to look into the matter at Kansas City, Missouri, and believed their notification of January 7th, 1897, to be within the sixty days for issuing said mandate, and said William C. White took no steps for staying said mandate for the reason that he supposed that general counsel did not wish so to proceed.

Your petitioner further alleges that this petition is made for the purpose of proceeding with such application to the Supreme Court of the United States for the writ of certiorari and is made in good

faith; that petitioner has ordered a complete transcript of the records in said case from the office of the clerk of this honorable court to accompany the application as required by rule 37 of the Supreme Court in such matters, together with sufficient copies of the printed record of this court for filing with such application, and that application to the Supreme Court of the United States, as aforesaid, will be presented to that court without delay.

Wherefore your petitioner prays that the mandate in this case, heretofore issued and sent to the clerk of the United States circuit court at Duluth as aforesaid, may be by this court recalled in order that petitioner may prosecute such application as aforesaid.

Dated January 15th, 1897.

WM. C. WHITE,
Attorney for Petitioner.

142 STATE OF MINNESOTA, } ss:
County of St. Louis, }

William C. White, being duly sworn, says that he is the counsel for appellant in the within-entitled matter, and as such makes this verification, and that the same is made by him in the place of appellant or its officers for the reason that they are absent from the State of Minnesota, within which affiant resides; that he has read the foregoing petition and knows the contents thereof, and that the same is true except as to the matters therein stated on information and belief, and as to *the* matters he believes — to be true.

WILLIAM C. WHITE.

Subscribed and sworn to before me this Jan. 15, 1897.

[SEAL.] DANIEL WAITE,
Notary Public, St. Louis County, Minn.

Endorsed: Original. U. S. circuit court of appeals, eighth district. Missouri, Kansas and Texas Trust Company, appellant, against Theodore M. Krumseig and Louise Krumseig, appellees. Petition for recall of mandate. Filed Jan. 18, 1897. John D. Jordan, clerk. Wm. C. White, attorney for appellant, 706–708 Torrey building, Duluth, Minn.

And on the twentieth day of January, A. D. 1897, in the record of the proceedings of said United States circuit court of appeals is an order recalling the mandate in said cause in the following words, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1896.

WEDNESDAY, *January* 20, 1897.

MISSOURI, KANSAS AND TEXAS TRUST COMPANY, Appellant,
vs.
THEODORE M. KRUMSIEG *et al.*, Appellees. } No. 756.

143 Appeal from the circuit court of the United States for the district of Minnesota.

This cause came on this day to be heard upon the motion of counsel for appellant for an order to recall the mandate of this court to the court below pending an application to the Supreme Court of the United States for a writ of certiorari.

And it appearing that the mandate of this court was issued to the circuit court of the United States for the district of Minnesota on the 5th day of January, A. D. 1897, under the rule of this court, it is, on consideration of the said motion, now here ordered by this court that said mandate be, and the same is hereby, recalled, and the same is ordered to be held by the clerk of this court for a period of sixty days from and after this date pending the said application for a writ of certiorari.

January 20, 1897.

144 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals, eighth circuit, do hereby certify that the foregoing pages, numbered from 1 to 143, inclusive, contain a full, true, and complete transcript of all the pleadings, proceedings, and record entries, including the opinion of said circuit court of appeals, in a certain cause in said court wherein The Missouri, Kansas and Texas Trust Company was appellant and Theodore M. Krumseig *et al.* were appellees, No. 756, May term, 1896, as full, true, and complete as the original of the same now remain on file and of record in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of St. Louis, Missouri, in the eighth circuit, this twenty-seventh day of January, A. D. 1897.

Seal United States Circuit Court of Appeals, Eighth Circuit.

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

145 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the eighth circuit, Greeting:

Being informed that there is now pending before you a suit in which The Missouri, Kansas & Texas Trust Company is appellant and Theodore M. Krumseig and Louise Krumseig are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the district of Minnesota, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed
146 into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 20th day of March, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Return to Writ of Certiorari.

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, in obedience to the command of the within writ and in pursuance of the stipulation of the parties, the original of which is hereto attached, do hereby certify that the transcript of record furnished with the application for a writ of certiorari to the Supreme Court of the United States contains a full, true, and complete transcript of the record and all things concerning the same as full, true, and complete as the originals of the same now remain on file and of record in my office.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of St. Louis, Missouri, this twenty-sixth day of March, A. D. 1897.

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

In the Supreme Court of the United States.

Ex Parte MISSOURI, KANSAS & TEXAS TRUST COMPANY, Petitioners.

Petition for writ of certiorari requiring the circuit court of appeals for the eighth circuit to certify to the Supreme Court for its review and determination the case of Missouri, Kansas & Texas Trust Company, appellant, *vs.* Theodore M. Krumseig and Louise Krumseig, appellees.

Stipulation.

In the above-entitled matter, being No. 728 of the October term, 1896, of the Supreme Court of the United States, a writ of certiorari in the case of Missouri, Kansas & Texas Trust Company, appellant, *vs.* Theodore M. Krumseig and Louise Krumseig, appellees, having been granted on the 15th day of March, 1897, and having been duly issued out of said court on the 20th day of March, 1897, as prayed by the petition in said matter, it is—

Stipulated and agreed between the counsel for the appellant and appellees that the certified copy of the transcript of record filed with the petition for said writ of certiorari may be taken as the required return to the said writ.

Dated March 23, 1897.

WM. C. WHITE,
Attorney for Appellant.
J. B. RICHARDS,
Attorney for Appellees.

147 [Endorsed:] 728, 16,507. Mar. 29, '97.

[Endorsed:] No. 16,507. Supreme Court of the United States. No. 728, October term, 1896. The Missouri, Kansas & Texas Trust Co. *vs.* Theodore M. Krumseig & Louise Krumseig. Writ of certiorari and return. Filed Mar. 26, 1897. John D. Jordan, clerk. Office Supreme Court U. S. Filed Mar. 29, 1897. James H. McKenney, clerk.

Endorsed on cover: Case No. 16,507. U. S. C. C. of appeals, 8th circuit. Term No., 316. The Missouri, Kansas & Texas Trust Company, petitioner, *vs.* Theodore M. Krumseig and Louise Krumseig. Filed March 8th, 1897.